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THE

LAW OF MASTER AND SERVANT.

BY

E. A. PARKYN, M.A.

The Law

OF

MASTER AND SERVANT

WITH A CHAPTER

ON

APPRENTICESHIP.

BY

ERNEST ALBERT PARKYN, M.A.,

Of the Inner Temple, Barrister-at-Law.

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PREFACE.

RECENT legislation affecting the Law of Master and Servant does not apply to several classes of servants. The Employers and Workmen Act, 1875, the Employers' Liability Act, 1880, and the Workmen's Compensation Act of the present year, do not, for example, include domestic and menial servants, clerks, shopmen, omnibus and tramway men, and those employed in professional pursuits. All such servants come under the Common Law, with which this Work more particularly deals.

The vexed question of Employers' Liability has now reached an interesting and important stage. The discontent regarding the Employers' Liability Act of 1880, on account of its restricted application, the power of contracting out of it, and its failing to settle the difficulty of Common Employment, has at last obtained statutory expression in the Workmen's Compensation Act just passed, but which does not come into operation until July 1st, 1898. Although the new statute does not repeal the Act of 1880, it is anticipated that it will largely, if not wholly, supersede it. As, however, the

Workmen's Compensation Act is made applicable only to certain specified employments—railways, factories, mines, quarries, engineering works, and partly the building trade—it by no means settles the question of Employers' Liability. An acquaintance with the Common Law on the subject is still, therefore, necessary and important.

The full text of the above-mentioned Statutes will be found in the Appendix.

Full references to the Reports of the Cases cited will be found in the Table of Cases. If the Report mentioned in the Text is not one easily accessible to the reader, he will find all the other Reports on turning to this Table, in the compilation of which I have had the assistance of the work on Master and Servant by the late Mr. Paterson, placed at my disposal by the publishers, who own the copyright.

E. A. P.

3, Temple Gardens, Temple, E.C.,
October, 1897.

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CORRIGENDA.

Page 5 (*a*), *for* 60 *read* 64.

Page 12 (*a*), *for* "Berridge" *read* Beveridge.

Page 15 (*t*), *for* "Ching" *read* Cherry.

Page 17 (*i*), *for* "45 L. J." *read* 46 L. T.

Page 38 (*c*), *for* "8 C. & P. 80" *read* 18 C. B. 718.

Page 38 (*h*), *for* "Spark" *read* Speck.

Page 62 (*y*), *for* "L. T." *read* T. L. R.

Page 63 (*c*), *for* "11 B. & E." *read* 11 A. & E.
for "1884" *read* 1834.

Page 68 (*m*) *for* "38 L. J. Q. B." *read* 33 L. J. Q. B.

Page 84 (*f*), *for* "53" *read* 23.

Page 84 (*i*), *for* "64 *read* 14.
for "6 C. B." *read* 1 C. B.

Page 85 (*k*), *for* "1 C. & P." *read* 5 C. & P.

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Page 97 (*h*), *for* "1858" *read* 1558.

Page 103 (*z*), *for* "Stark." *read* Stra.
for "C. & K." *read* C. & P.

Page 136, 10 lines from bottom of page, *for* "therein" *read* those.

CHAPTER I.

The Parties to the Contract.

It is difficult to define the relationship of master and servant so as to include all the numerous instances of it recognized by the law. "The relation of master and servant," says *Blackstone* (*a*), "is founded in convenience, whereby a man is directed to call in the assistance of others where his own skill and labour will not be sufficient to answer the cares incumbent upon him." It must further be added, however, that it is of the essence of the relationship that the master not only has the right to say what his servant shall do, but also the way in which the work is to be done (*b*). "A servant is a person subject to the command of his master as to the manner in which he shall do his work" (*c*).

Different kinds of servants.—A distinction has always been made between *servants intra mœnia* or domestics, and such as are not employed in a menial capacity as *clerks, shopmen, and the like,* though these are engaged within the offices or shops of their employers. And on the other hand, a servant may be menial, though he does not reside within his master's house. A head gardener, for example, hired at a yearly wage of 100*l.*, with a house in his master's grounds, and who was allowed to take apprentices at a premium, and had five under-gardeners to assist him, was held to be a menial servant (*d*). In like manner, a huntsman, though hired

(*a*) Comm. I. 422.
(*b*) *Reg.* v. *Walker* (1858), 27 L. J. M. C. 207.
(*c*) Blackburn, J., in *Reg.* v. *Negus* (1873), L. R. 2 C. C. 37; 42 L. J. M. C. 62.
(*d*) *Nowlan* v. *Ablett* (1835), 2 Cr. M. & R. 54.

at yearly wages (*e*). On the other hand, a governess (*f*) at a yearly salary, and the housekeeper (*g*) of a large hotel are not menial servants. A *prima donna* giving her exclusive service, and acting under directions, is to be regarded as a servant (*h*). The chairman of a public meeting is not in the relation of master to the stewards or managers appointed for the purpose of keeping order. In the course of his judgment in this case (*i*), *Amphlett*, B., said: "In the case of master and servant, the character and duties attaching to the employment are known and defined beforehand. The servant who is to perform these is selected accordingly. In the present case, no such relationship existed in the first instance, nor did it arise during the transaction."

A third class of servant is distinguished, viz., those engaged in husbandry and manufactures, and known as *labourers*, *workmen*, and *artizans*.

Lastly, there is a class of servants quite *sui generis*, that of *apprentices*, which will be separately treated of hereafter (*k*).

Difficulties sometimes arise in distinguishing the relationship of the servant to his master from others more or less closely allied to it, as the relationship of contractors, agents, and bailees to their employers.

Servant distinguished from contractor.—A contractor is left by his employer to use his own judgment, and is not directed by him as to details. An employer is consequently not liable for the acts of the servant of a contractor employed by him (*l*). A contractor was employed to fill in the earth over a drain which was

(*e*) *Nicoll* v. *Greares* (1864), 33 L. J. C. P. 259; 10 L. T. (N.S.) 531.
(*f*) *Todd* v. *Kerrich* (1852), 22 L. J. Ex. 1.
(*g*) *Lawler* v. *Linden* (1876), 10 Ir. Rep. C. L. 188.
(*h*) *Lumley* v. *Gye* (1853), 22 L. J. Q. B. 463.
(*i*) *Lucas* v. *Mason* (1875), 44 L. J. Ex. 145.
(*k*) *Vide* Chapter XIV.
(*l*) *Reeder* v. *L.&N. W.R.* (1849), 4 Ex. 244; *Cf. Sharrod* v. *L.&N. W.R.* (1849), 4 Ex. 580.

being made across a highway. The contractor's servants did the work so carelessly that a person driving along the road sustained personal injury. It was held that there was no evidence to go to the jury of the employer's liability (*m*). Where, however, a labourer was directly employed to cleanse a drain, the employer was held liable for injury arising from the negligent manner in which the labourer had done his work (*n*). A corporation is not the master of the servants of a contractor who supplied horses and drivers for their watering-carts (*o*). But the owner of a steamer hired for a day remains the master of those employed, and he, not the hirer, is responsible for injury happening to passengers, although they pay their fares to the hirer (*p*). And a jobmaster remains the master of a driver he lets out with horses to draw a customer's carriage, even where the same driver is habitually employed, and is paid a daily fee and provided with livery by the customer (*q*). A recent case illustrates very well how, where contractors are employed, difficulty may arise in fixing responsibility. Certain stevedores contracted with the owners of a ship to discharge her cargo. The lifting tackle was worked by steam power—the ship boilers—and was attended to by two of the crew, who were paid by the shipowners, one of whom acted as winchman, the other as hatchman. Through the negligence of the winchman, a servant of the stevedores was injured. It was held that the winchman was still in the employment of the shipowners, and not of the stevedores, and therefore the shipowners, and not the contractors, were liable (*r*).

(*m*) *Peachey* v. *Rowland* (1853), 22 L. J. C. P. 81.
(*n*) *Sadler* v. *Henlock* (1855), 24 L. J. Q. B. 138.
(*o*) *Jones* v. *Liverpool Corporation* (1885), 14 Q. B. D. 890.
(*p*) *Dalzell* v. *Tyrer* (1858), 28 L. J. Q. B. 52.
(*q*) *Quarman* v. *Burnett* (1840), 6 M. & W. 499; 9 L. J. Ex. 308.
(*r*) *Union Steamship Co.* v. *Claridge* (1894), 63 L. J. P. C. 56.

The servant of a foreman is the servant of the foreman's employer (*s*).

Servant distinguished from agent.—"A principal has the right to direct what the agent has to do, but a master has not only that right, but also the right to say how it is to be done" (*t*). A clerk to a wine merchant authorized by his employer to sign delivery orders *per pro*, and who by so doing got possession of dock warrants, on which he obtained an advance of money, was held to be a servant, not an agent (*u*). A retail coal trader, B., agreed to sell coals on commission for a firm of coal merchants, to collect moneys due for the orders he obtained, such moneys not to be kept longer than a week after receiving the same, and the commission not to be due until the money was received by the employer; but he was not to be held responsible for bad debts, and the agreement to be terminable at a month's notice. The court decided that B. was only an agent, not a clerk or servant. *Erle*, C.J., in delivering judgment, said: "If a man be entrusted to get orders and to receive money, getting the orders when and where he chooses, and getting the money when and where he chooses, he is not a clerk or servant" (*x*). And a person exclusively engaged by his employer to obtain orders on commission, though free to apply for orders when most convenient to himself, was held to be an agent, and not a servant. (*y*).

A person selling wine on commission is an agent, not a servant (*z*).

A servant cannot, as a rule, delegate his authority to another. Only in certain exceptional cases as, *e.g.*, the

(*s*) *Oldfield* v. *Furness, Withey & Co.* (1893), 9 T. L. R. 515.
(*t*) Bramwell, B., in *Reg.* v. *Walker* (1858), 27 L. J. Q. B. 207.
(*u*) *Lamb* v. *Attenborough* (1862), 31 L. J. Q. B. 41.
(*x*) *Reg.* v. *Bowers* (1866), 35 L. J. M. C. 206.
(*y*) *Reg.* v. *Negus* (1873), 42 L. J. M. C. 62.
(*z*) *Motion* v. *Michaud* (1892), 8 T. L. R. 253, 447.

master of ship, can the servant become the agent by necessity of his master (*a*).

A district delegate appointed by the members of a trade union to confer with and advise them in disputes, is neither the servant nor the agent of the union (*b*).

Servant distinguished from bailee.—A foreman who obtaining fraudulently from the cashier more than was sufficient to pay the men under him their proper wages, appropriated the balance, is a servant, not a bailee (*c*). But a drover employed to sell an animal at market, and bring back the money received for it, is not a servant, but a bailee (*d*). Although a cabdriver who hires a horse and cab at so much a day, and keeps all he earns, would otherwise be regarded as a bailee (*e*), he is under the provisions of the Hackney Carriage Acts (*f*), the servant of the cab proprietor. Lord *Campbell*, C.J., in *Powles* v. *Hider* (*g*) said: "The Hackney Carriage Acts always regard the proprietor and driver of the hackney cab as employer and employed, or as master and servant, and clearly contemplate that the party who engages the cab under the care of the driver shall have a remedy against the proprietor." Where a cab proprietor let out only the cab at so much a week, and the driver provided his own horse and harness, the relationship was held to be that of bailor and bailee (*h*). In this case, both *Grove* and *Bowen*, JJ., dissented from the sweeping interpretation of the Hackney Carriage Acts by Lord *Campbell* in *Powles* v. *Hider*. It is submitted that the

(*a*) *Gwilliam* v. *Twist*, [1895] 2 Q. B. 84; 60 L. J. Q. B. 474.
(*b*) *Flood* v. *Jackson*, [1895] 2 Q. B. 21; 64 L. J. Q. B. 665.
(*c*) *Reg.* v. *Cooke* (1871), 40 L. J. M. C. 68.
(*d*) *Reg.* v. *Goodbody* (1838), 8 C. & P. 665.
(*e*) *Fowler* v. *Locke* (1872), 41 L. J. C. P. 99; 43 L. J. C. P. 394; *Cf.* COCKBURN, C.J., in *Venables* v. *Smith*, *vide infra*.
(*f*) 1 & 2 Will. 4, c. 22, and 6 & 7 Vict. c. 86.
(*g*) *Powles* v. *Hider* (1856), 25 L. J. Q. B. 331; *Venables* v. *Smith* (1877), 46 L. J. Q. B. 470.
(*h*) *King* v. *Spurr* (1881), 51 L. J. Q. B. 105.

Acts referred to amount to this: that failing recovery from the driver, action may be taken against the proprietor. The owner is therefore ultimately responsible for the acts of the driver, which is tantamount to the relationship of master and servant. The decisions in *Powles* v. *Hider* and *Venables* v. *Smith* were followed and fully endorsed in the more recent case of *King* v. *London Improved Cab Co.* (*i*), where Lord *Esher*, M.R., approved what *Cockburn*, C.J., had said in *Venables* v. *Smith*, and added: "Though between the driver and the proprietor, the driver may not in fact be the servant of the proprietor, yet as the proprietor selects the driver, the latter, as regards the public, and for the protection of the public, is to be deemed the servant of the proprietor."

Servant distinguished from partner.—The remuneration of the servant of a person engaged in business by a share of the profits does not of itself make the servant a partner in the business (*k*). A manager of a firm who received forty per cent. on the profits (*l*); a tailor who obtained orders for another, and was paid by a share of the profits as a commission (*m*); and a cashier who received in addition to a fixed salary, a percentage on the profits, but had no control over the management of the business (*n*), were held to be servants, not partners. The carrying on of an underwriting business at a fixed salary and one-fifth of the profits, but also to be liable to meet a share of unexpected claims, were insufficient in the opinion of *Jessel*, M.R., to constitute a partnership. "It is not a partnership at all, but a contract of hiring and service" (*o*).

(*i*) *King* v. *London Improved Cab Co.* (1889), 23 Q. B. D. 281.
(*k*) 53 & 54 Vict. c. 39, s. 1, ss. 3, 6,
(*l*) *Stocker* v. *Brocklebank* (1851), 20 L. J. Ch. 401.
(*m*) *Andrews* v. *Pugh* (1855), 24 L. J. Ch. 58.
(*n*) *Reg.* v. *Macdonald* (1861), 31 L. J. M. C. 67; 5 L. T. 330.
(*o*) *Ross* v. *Parkyns* (1875), 44 L. J. Ch. 610; 30 L. T. 331; see also *Harrington* v. *Churchward* (1849), 29 L. J. Ch. 521; and *Reg.* v. *Wortley*

Servant as tenant.—The occupation of a house as apparent tenant (*p*), even when for the purpose of carrying on business, does not necessarily alter the relation of master and servant, nor make any difference in the power of dismissal possessed by the former. A farm-bailiff allowed to occupy a cottage as part payment for his wages, and to enable him properly to fulfil his duties, is not a tenant, for he was held to be not a substantial householder within 43 Eliz. c. 2, s. 1, and, therefore, incapable of being appointed overseer of the parish (*q*). A servant whose wages were less by 5*l.* per annum because he occupied, rent free, a cottage belonging to his master (*r*), a labourer who received 2*s.* a week less wages for a similar reason (*s*), a shepherd whose remuneration was 7*s.* a week and a free cottage (*t*), and a toll collector (*u*) living in the toll-house, and 1*s.* a week deducted from his wages in consequence, have all been held not to be tenants. The following are all further instances in which it was decided there was no tenancy. A surgeon in Greenwich Hospital occupying rooms in the hospital (*x*). The manager of a beerhouse who lived on the premises and agreed to leave the business at a month's notice (*y*). A Wesleyan minister living in the house taken by the stewards of the circuit who did the repairs, although he pays the rates and taxes and the rent, for he is in the position of a servant of the circuit stewards (*z*). A militia sergeant occupying

(1851), 21 L. J. M. C. 44; *Per* Lord CAMPBELL, "*Inter se*, the prisoner and his master were not partners. There was no community of profit and loss."

(*p*) *White* v. *Bailey* (1861), 30 L. J. C. P. 253.
(*q*) *Reg.* v. *Spurrell* (1866), 35 L. J. M. C. 72.
(*r*) *Bertie* v. *Beaumont* (1812), 16 East. 33.
(*s*) *R.* v. *Cheshunt* (1815), 1 B. & Ald. 473.
(*t*) *R.* v. *Bardwell* (1823), 2 B. & C. 161.
(*u*) *Hunt* v. *Colson* (1833), 3 Mo. & Sc. 790.
(*x*) *Dobson* v. *Jones* (1844), 13 L. J. C. P. 126; 5 M. & G. 112.
(*y*) *Mayhew* v. *Suttle* (1854), 24 L. J. Q. B. 54; 4 E. & B. 347.
(*z*) *Clark* v. *Bury St. Edmunds* (1856), 26 L. J. C. P. 12.

a house rent free (*a*). On the other hand, the following have all been held to be tenants. A collier living in a house belonging to his employer, provided the occupation is not connected with his service in the colliery (*b*). The governor of a gaol who resides outside the prison (*c*). The canon of a cathedral occupying a house with which the chapter could not interfere, and which he himself repaired (*d*). A bailiff in the receipt of weekly wages provided with a house and pasturage for two cows by his master. The house and pasturage were not connected with his service, nor were they necessary for the convenient performance of it (*e*). The occupiers of Hampton Court provided they are rateable (*f*).

Who may be parties.—Generally, every person of full age and *sui juris* may enter into a contract either as master or as servant. There is one curious exception to this rule, viz., the relation between a barrister and his client. On this subject, the learned judgment of *Erle*, C.J., in *Kennedy* v. *Brown et Ux* (*g*) may be consulted, in which he says: "The relation of counsel and client renders the parties mutually incapable of making any legal contract of hiring and service concerning advocacy in litigation. For authority in support of this proposition, we place reliance on the fact that in all the records of our law, from the earliest time till now, there is no trace whatever either that an advocate has maintained a suit against his client for his fees in litigation, or a client against an advocate for breach of a contract to advocate."

A servant may have *two masters* at the same time.

(*a*) *Fox* v. *Dalby* (1874), 44 L. J. C. P. 42; L. R. 10 C. P. 285.
(*b*) *Smith* v. *Seghill* (1875), 44 L. J. M. C. 114; 32 L. T. 859.
(*c*) *Gambier* v. *Lydford* (1854), 23 L. J. M. C. 69; 3 E. & B. 346.
(*d*) *Ford* v. *Harrington* (1869), 39 L. J. C. P. 107; 21 L. T. 609.
(*e*) *Reg.* v. *Minster* (1814), 3 M. & S. 276.
(*f*) *Reg.* v. *Ponsonby* (1841), L. R. 3 Q. B. 14.
(*g*) *Kennedy* v. *Brown et Ux* (1863), 32 L. J. C. P. 137.

For example, a clerk who sells goods for several persons may be the servant of each of them (*h*), and a commercial traveller who obtains orders, or is free to obtain orders for several different firms, is the servant of each of them (*i*).

The exceptions to the general rule just stated are infants, married women and lunatics. These must therefore be briefly considered, and a few words added respecting partners and corporations.

Infants.—An infant may be either a master or a servant, but the contract of hiring and service is voidable by him unless it can be shown to be for his benefit (*k*). A contract whereby an infant agreed to enter into the service of his master for twelve months, at certain weekly wages, to serve him at all times during that term, and to work fifty-eight hours a week, and containing a proviso that in case the steam engine should be stopped from accident, or any other cause, the master might retain all wages of the servant during that time, was held wholly void (*l*). In view of the decision in *Coxhead* v. *Mullis* (*m*), it would appear clear that a contract of service entered into by an infant would not be binding even if ratified after attaining full age. The court in that case decided that a promise of marriage came under section 2 of the Infants' Relief Act, 1874 (*n*). Lord *Coleridge*, C.J., referring to this section in concluding his judgment, said :—" I see nothing to limit the words of the Act."

Married women.—At common law a married woman cannot enter into a contract of hiring or service as master or servant. By the Married Women's Property Act, 1882 (*o*), repealing the previous Acts of 1870 and

(*h*) *Reg.* v. *Batty* (1842), 2 Mood. C. C. 257.
(*i*) *Tite's case* (1861), 30 L. J. M. C. 142 ; 4 L. T. 259.
(*k*) *Wood* v. *Fenwick* (1842), 10 M. & W. 195.
(*l*) *Reg.* v. *Lord* (1848), 17 L. J. M. C. 181 ; 12 Q. B. 757.
(*m*) *Coxhead* v. *Mullis* (1878), 47 L. J. C. P. 761 ; 39 L. T. 349.
(*n*) 37 & 38 Vict. c. 62. (*o*) 45 & 46 Vict. c. 75.

1874 (*p*), a married woman is presumedly free to enter into a contract either as master or servant independently of her husband. Section 1, sub-section (2) of this statute enacts that "A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her." And by section 2 she is "entitled to have and to hold as her separate property . . . . any wages, earnings, money and property gained or acquired by her in any employment, trade or occupation in which she is engaged, or which she carries on separately from her husband." Section 5 confers the same freedom on women married before the Act as regards any wages or earnings accruing to them after the Act came into operation. Notwithstanding the words of the Act it is difficult to see how the law could permit a contract of service by the wife against the wishes of the husband, which rendered cohabitation impossible. How far the act of a wife, as for example in hiring a servant, binds her husband, rests now not on the bond of marriage but on the ordinary relations of the parties, on the words or acts of the husband, or the circumstance of their living together (*q*). Any presumption arising in favour of the liability of the husband for such acts of his wife might equally well arise in the care of a sister or housekeeper (*r*).

(*p*) 33 & 34 Vict. c. 93 ; 37 & 38 Vict. c. 50.

(*q*) *Reed* v. *Moore*, 5 C. & P. 200.

(*r*) *Debenham* v. *Mellon* (1880), 5 Q. B. D. 394 ; 6 App. Cas. 24 ; 50 L. J. Q. B. 155. Thesiger L.J. : "The liability of a husband for debts incurred by his wife during cohabitation is based in the main upon the ordinary principles of agency."

If a female servant marry, the contract of service is not dissolved, but she must serve out her time (*s*).

Lunatics.—A contract entered into by a lunatic is binding unless it can be shown that the other party was aware of the unsoundness of mind of the lunatic at the time the contract was made. It seems clear therefore, that if a lunatic were to hire a servant who was unaware of the unsoundness of mind of his master there would be a valid contract of hiring and service. Whatever may have been the old law on the subject the above appears now clearly established by the cases of *Molton* v. *Camroux* (*t*) and the *Imperial Loan Co.* v. *Stone* (*u*). In the latter case the law was succinctly stated by Lord *Esher*, M.R., as follows:—"When a person enters into a contract and afterwards alleges that he was so insane at the time that he did not know what he was doing, and proves the allegation, the contract is as binding on him in every respect, whether it is executory or executed, as if he had been sane when he made it, unless he can prove further that the person with whom he contracted knew him to be so insane as not to be capable of understanding what he was about."

Partners.—A partner has implied authority to hire a servant on behalf of the firm (*v*). A servant of a firm of partners is the servant of each partner (*x*). Where a servant received directly contrary orders from two partners it was held he might obey either (*y*). All partners are liable for injury to a servant caused by one of them, if it occurs in a matter within the scope of the common undertaking of the partnership (*z*). The

(*s*) Burn's Justice of the Peace, "Servants" 222 (30th ed.)
(*t*) *Molton* v. *Camroux* (1848), 18 L. J. Ex. 356; 4 Ex. 17.
(*u*) *Imperial Loan Co.* v. *Stone* (1892), L. R. 1 Q. B. 599.
(*v*) *Beckham* v. *Drake* (1841), 9 M. & W. 79.
(*x*) *R.* v. *Leech* (1821), 3 Stark. 70.
(*y*) *Donaldson* v. *Williams* (1853), 1 Cr. & M. 345.
(*z*) *Ashworth* v. *Stamerix* (1861), 30 L. J. Q. B. 183.

general manager of a firm is not entitled to engage clerks for long periods without the consent of the partners (*a*).

Corporations.—The general rule being that all contracts of importance entered into by a corporation must be under seal, but in trifling matters or those of urgent necessity a parol agreement is sufficient, it follows that all the higher class servants hired by a corporation must be appointed under seal, but the hiring of an inferior servant may be by parol (*b*).

In the case of *Trading Companies* the appointment of servants need not be under seal, when incidental to the main business, for such contracts may be made by parol. Contracts by companies are in fact on exactly the same footing as those between private individuals (*c*).

A solicitor appointed by the articles of association of a company (before incorporation) to be the sole legal adviser to the company, failed in an action against the company for employing other solicitors, it being held that there was no contract on the part of the company to employ him as alleged (*d*).

With regard to contracts made by *Urban Authorities* the Public Health Act, 1875 (*e*), provides that "every contract made by an authority whereof the value or amount exceeds 50*l*. shall be in writing and sealed with the common seal of the authority" (*f*). The appointment of a medical officer by guardians must be under seal (*g*). A rate collector not appointed under seal was

(*a*) *Berridge* v. *Berridge* (1872), L. R. 2 Sc. Ap. 183.

(*b*) *Ludlow* v. *Charlton* (1840), 6 M. & W. 815; *Arnold* v. *Poole* (1842), 4 M. & G. 860; *Smith* v. *Carteright* (1851), 6 Ex. 927; 20 L. J. Ex. 401; *Nicholson* v. *Bradfield Union* (1866), 35 L. J. Q. B. 176; 14 L. T. 830.

(*c*) *Re Contract Co.* (1869), 8 Eq. 14. See Companies Act, 1867 (30 & 31 Vict. c. 131), s. 37.

(*d*) *Eley* v. *Positive, etc. Co.* (1876), 45 L. J. Ex. 58; 34 L. T. 141.

(*e*) 38 & 39 Vict. c. 55, s. 174, sub-s. (1).

(*f*) *Young* v. *Leamington Corporation* (1882), 52 L. J. Q. B. 713; 49 L. T. 1.

(*g*) *Dyte* v. *St. Pancras Guardians* (1863), 27 L. T. 342.

unable to recover against the guardians (*h*). The clerk to the master of a workhouse has been held not to be an inferior servant and his appointment not a matter of necessity, and therefore his appointment by a board of guardians ought to be under seal (*i*).

The *London Vestries* are corporations under the Metropolitan Management Act, 1855 (*k*), but the vestries outside the metropolis are not.

(*h*) *Smart* v. *West Ham Union* (1856), 25 L. J. Ex. 210.
(*i*) *Austin* v. *Bethnal Green* (1874), 43 L. J. C. P. 100; 29 L. T. 807.
(*k*) 18 & 19 Vict. c. 120, s. 42 and Sch. (A).

CHAPTER II.

The Contract of Hiring and Service.

Wherever the relation of master and servant exists there must be a contract expressed or implied between them, that the latter should enter for pay or other valuable consideration into the service of the former, and devote to him his personal skill and labour. This is called the contract of hiring, and the rules respecting it differ according to the capacity in which the servant enters into the service of the master (*l*).

Contract in writing.—Statute of Frauds.—If the contract of service is not to be completed within one year it must, by the Statute of Frauds, be in writing (*m*). A groom and gardener was engaged verbally on May 27th to enter into service on June 30th following for one year. Although ready and willing to enter upon his duties on that day the master refused to take him into his service. It was held that no action lay for breach of contract, that a full, effective, and complete performance will alone satisfy the terms of the statute (*n*). A writing on one side with acceptance of it on the other is sufficient to satisfy the statute (*o*). The Statute of Frauds does not, however, make a parol agreement for more than a year void, but only renders such contracts unenforceable (*p*). The agreement need not be in one writing, but may be contained in several separate documents if they clearly show that they refer

(*l*) *Beeston* v. *Collyer* (1827), 4 Bing. 309.
(*m*) 29 Car. II. c. 3, s. 4.
(*n*) *Bracegirdle* v. *Heald* (1818), 1 B. & Ald. 722.
(*o*) *Smith* v. *Neale* (1857), 26 L. J. C. P. 143.
(*p*) *Leroux* v. *Brown* (1852), 22 L. J. C. P. 1.

to each other (*q*). The rules of a workshop may form part of the written contract between a workman and his master (*r*). If the contract might be performed within the year and there is no agreement to the contrary it is not within the statute (*s*), nor if it is performed by one party within the year (*t*); but a contract, which according to its terms is *primâ facie* not to be performed within a year, is not the less within the statute because it is made defeasible by a contingency which may occur within that period (*u*).

A *verbal contract* of service for more than a year by a "workman" was not enforceable unless service had been entered upon (*x*) under the Master and Servant Act, 1867, now repealed. Such a contract is, however, now enforceable by the Employers and Workmen Act, 1875 (*y*).

General hiring.—If the terms of the contract are general the hiring is for a year. That a general hiring is a yearly one with *domestic* and *menial servants* has not been disputed for a very long time (*z*). And in all other cases the same will be assumed in the absence of circumstances combating it. In the case of menial or domestic servants it is the rule, however, that with a general hiring, either party may determine the service at pleasure on giving a month's notice (*a*). And it has been decided again and again that a servant may be dismissed without notice on payment of a month's

(*q*) *Crane* v. *Powell* (1868), 38 L. J. C. P. 43; 20 L. T. 703; *Jones* v. *Victoria Graving Dock Co.* (1877), 46 L. J. Q. B. 219; 36 L. T. 347.
(*r*) *Carus* v. *Eastwood* (1875), 32 L. T. 855.
(*s*) *Touch* v. *Strawbridge* (1846), 2 C. B. 803; 15 L. J. C. P. 170.
(*t*) *Ching* v. *Hemming* (1849), 4 Ex. 531; 19 L. J. Ex. 63.
(*u*) *Darey* v. *Shannon* (1879), 48 L. J. Ex. 459; 40 L. T. 628; *Dobson* v. *Collis* (1856), 25 L. J. Ex. 267.
(*x*) *Banks* v. *Crossland* (1874), 44 L. J. M. C. 8; 32 L. T. 226.
(*y*) 38 & 39 Vict. c. 90, s. 10.
(*z*) *R.* v. *Worfield* (1794), 5 T. R. 506.
(*a*) *Cutter* v. *Powell* (1795), 6 T. R. 826; *Fawcett* v. *Cash* (1834), 5 B. & Ad. 904.

wages from the day of dismissal (*b*). This power has, indeed, been so often exercised by the master and acquiesced in by the servant, that it is a matter of daily occurrence. Objection has been made to it on the ground that it works an injustice to the servant since he is thereby deprived of a month's board and lodging. But to this it may be answered that in cases where there is good reason for the dismissal, which will probably be in most of them, there would be manifest injustice to the master were he obliged to maintain a servant whose services he evidently does not consider equal in value to his keep. On hiring a domestic or menial servant, therefore, if it is intended that the contract shall be only for one month, or some other definite period, or that more or less than a month's notice or wages shall be given or be sufficient, there should be a clear understanding to that effect, and the agreement made so that it is capable of proof in order to rebut the presumption of its being a general hiring.

With regard to *clerks*, and other servants of a superior class, although if the hiring is a general one it will be assumed to be for a year, and so on until determined by notice, yet it must be a notice expiring at the end of some current year; the rule that a month's notice or wages will be sufficient to determine the hiring at any period of the year not applying to this class of servants; it has, however, never been clearly decided what length of notice is required; probably three months would be requisite and sufficient (*c*). Where the contract would otherwise be deemed a yearly hiring, the mode of payment of the wages will not vary the construction, nor affect its other incidents (*c*). In any contract of hiring of a servant of this

(*b*) *Robinson* v. *Hindman* (1801), 3 Esp. 235.

(*c*) *Beeston* v. *Collyer* (1827), 4 Bing. 309; *Williams* v. *Byrne* (1857), 7 A. & E. 177; *Todd* v. *Kerrich* (1852), 8 Ex. 181; 22 L. J. Ex. 1; *Forgan* v. *Burke* (1861), 12 Ir. C. L. R. 495.

description in which there are any conditions different from those implied in a general hiring, the agreement should be made in writing or under such circumstances that proof of the conditions may be forthcoming if required.

With *agricultural labourers* a general hiring is a hiring for a year, and such a servant dismissed with good cause before the end of the year cannot recover any wages for that year (*d*). But where an agricultural labourer was hired at so much a week with board and lodging it was held to be a weekly hiring (*e*). If an agricultural labourer serve for a year it is strong presumptive evidence that he served under a yearly hiring (*f*). And after three years' service at even weekly wages a yearly hiring has been presumed (*g*). A hiring for clothes, meat and drink with no mention of time is a yearly hiring (*h*).

An *engineer* was engaged at a salary of 500*l*. a year. He was dismissed at three months' notice. It was held to be a yearly hiring, and he recovered his salary for the part of the year unexpired. "The general rule of law applicable," said *Grove*, J., "is that where the hiring is a yearly one, it cannot be determined by either party before the expiration of the year (*i*). The *manager of a shop* who was paid his salary of 30*l*. a year monthly was held to be hired for a year (*k*). In the case of a *manufacturer's agent*, however, hired at a yearly salary, the hiring was not a yearly one as there was a well-proved custom that a month's notice was sufficient for

(*d*) *Spain* v. *Arnott* (1817), 2 Stark. 256; *Lilley* v. *Elwin* (1848), 11 Q. B. 742; 17 L. J. Q. B. 132.
(*e*) *R.* v. *Dodderhill* (1814), 3 M. & S. 243.
(*f*) *R.* v. *Lyth* (1793), 5 T. R. 327.
(*g*) *R.* v. *Pendleton* (1812), 15 East, 449.
(*h*) *R.* v. *Worfield* (1794), 5 T. R. 506.
(*i*) *Buckingham* v. *Surrey Canal Co.* (1882), 45 L. J. 885; 46 J. P. 774.
(*k*) *Davis* v. *Marshall* (1861), 4 L. T. (N.S.) 266.

dismissal (*l*). A *commercial traveller* entered into the service of a firm of wine merchants on the agreement that he should receive a yearly salary payable quarterly, that it should be binding for twelve months, and continue until three months' notice on either side should determine it. It was decided that the employment might be determined at the end of the first year by three months' notice (*m*).

A *foreman* hired at 2*l*. a week and a house to live in, is hired by the week only (*n*). Whilst an *ostler's* has been held to be a weekly hiring (*o*); that of a *boots*, who had served for three years, is a yearly hiring (*p*).

An engagement of an *author* to write tales weekly in a magazine for twelve months, for which he was to be paid 10*l*. a month, was a yearly hiring (*q*).

With regard to *editors* there appears to be a generally acknowledged custom, that the editor of a periodical is hired by the year, but it was decided in *Baxter* v. *Nurse* (*r*), that this does not apply to the editor of a new publication, In that case *Tindal*, C.J. said, "It is not a rule of law that a general hiring is for a year, but a question for the jury, depending upon the facts of each particular case." In an action by an editor, the year before, for wrongful dismissal, the jury found, in face of evidence going to show that editors, sub-editors, and reporters of a newspaper permanently employed are hired for the year, that his was a yearly engagement (*s*). In *Fairman* v. *Oakford* (*t*), it was again laid down by

(*l*) *Parker* v. *Ibbetson* (1858), 27 L. J. C. P. 236; 4 C. B. (N.S.) 346.
(*m*) *Brown* v. *Symons* (1860), 29 L. J. C. P. 251.
(*n*) *Evans* v. *Roe* (1872), L. R. 7 C. P. 138; 26 L. T. 70; see also *Robertson* v. *Jenner* (1867), 15 L. T. 514.
(*o*) *R.* v. *Robroden* (1815), 1 M. & Ry. 689.
(*p*) *R.* v. *St. Martin's* (1828), 8 B. & C. 674.
(*q*) *Stiff* v. *Cassell* (1856), 2 Jur. (N.S.) 348.
(*r*) *Baxter* v. *Nurse* (1844), 6 M. & G. 938.
(*s*) *Holcroft* v. *Barber* (1843), 1 C. & K. 4.
(*t*) *Fairman* v. *Oakford* (1860), 29 L. J. Ex. 459.

Channell, B., and apparently endorsed on appeal that "except in the case of menial servants there is no inflexible rule that a general hiring was a hiring for a year, but that every case depended on its own peculiar circumstances, and is for the jury to determine."

Agreement to serve not agreement to employ.—If a servant agrees to serve for a term of years at so much a week, the law does not imply from such an agreement to serve a corresponding agreement to employ, and consequently the master may dismiss the servant at any time (without notice), and refuse to give him further employment (*u*). Mutuality can be said to be essential to the contract of hiring only in the sense of reciprocity of assent, and not in that of reciprocity of obligation. If, however, the terms of the agreement are minutely stated on the part of the servant who also agrees not to take other employment, the master would be impliedly bound for the same period (*x*).

Permanent employment.—A contract to find a person permanent employment means only that he shall be employed for some substantial period of time, and shall not be dismissed without a cause (*y*).

Breakages and losses by servant.—The master cannot keep back out of wages the value of any things which may have been broken or lost by the servant unless there is a distinct agreement to that effect. To prevent misunderstanding thereafter it is desirable therefore to insert such a proviso in the contract (*z*).

(*u*) *Williamson* v. *Taylor* (1843), 5 Q. B. 175; 13 L. J. Q. B. 81; *Aspden* v. *Austin* (1844), 5 Q. B. 671; 13 L. J. Q. B. 155; *Dunn* v. *Sayler* (1844), 5 Q. B. 685; 13 L. J. Q. B. 159; *Down* v. *Pinto* (1854), 9 Ex. 327; 23 L. J. Ex. 103.

(*x*) *Pilkington* v. *Scott* (1846), 15 M. & W. 637; *Hartley* v. *Cummings* (1847), 5 C. B. 247; 17 L. J. C. P. 84.

(*y*) *Emmens* v. *Elderton* (1853), 4 H. L. C. 624; *Hartley* v. *Cummings* (1847), 5 C. B. 247; *Pilkington* v. *Scott* (1846), 15 M. & W. 637; *Down* v. *Pinto* (1854), 9 Ex. 327.

(*z*) *Leloir* v. *Bristow* (1815), 4 Camp. 134.

Or a sum of money may be deposited by the servant with the master as a guarantee fund, as is sometimes done in hotels, to meet such losses. And as the master will be bound to pay wages according to the length of service although the servant may have left without notice, it is well to stipulate that in such a case the servant shall forfeit a month's wages, which the master may deduct from the amount due, otherwise the master's only remedy will be by action against the servant for damages (*a*). If a servant is provided with a suit of clothes in addition to his wages, he cannot retain it on leaving his situation, unless there is a distinct proviso to that effect (*b*).

When servant entitled to quantum meruit.—If the engagement is for no definite time, and payments are not made at any regular periods, the servant may recover on a *quantum meruit* for the time served. Thus an assistant surgeon so engaged, after serving six months fell ill and was incapacitated from serving. After his recovery, he did not apply to return to his employment, nor was he called upon to do so by his employer. On action being brought to recover a year's wages it was held not to be a yearly hiring, but that he was entitled to a *quantum meruit* for the time actually served and not paid for (*c*).

Injunction as a remedy for breach of the contract.—The court will not decree *specific performance* in contracts of personal service (*d*). There are several remedies as (1) dismissal; (2) by an action at law; (3) by injunction. The last will not lie where there is only an affirmative agreement. But the court will grant an *injunction* in aid of a contract of service

(*a*) *Huttman* v. *Boulnois* (1826), 2 C. & P. 510.
(*b*) *Crocker* v. *Molyneux* (1828), 3 C. & P. 470.
(*c*) *Bayley* v. *Rimmell* (1836), 1 M. & W. 506.
(*d*) Judicature Act, 1873, s. 25, sub-s. (7); *Britain* v. *Rossiter* (1879), 11 Q. B. D. 123.

provided there is at least an express negative purpose, if no express negative clause (*e*). An injunction was therefore refused to restrain a manager who had agreed to give his whole time, from joining another business. The remedy it was said in such a case is by dismissal, or by an action at law (*f*). The communication of trade secrets acquired during service by a clerk is a breach of the implied contract arising from the confidence of his master, and in such a case an *interim injunction* has been granted to restrain a clerk from publishing or communicating the information thus obtained (*g*). This principle was still more emphatically stated in a later case (*h*) in which a clerk copied surreptitiously from the order book a list of his master's customers for his own use after leaving and setting up in a rival business. It was held that by such conduct the implied term in a contract of service involving confidential relations of fidelity and good faith on the part of the servant was broken, and that such a servant is guilty both of breach of contract and of breach of trust, and the master was entitled to (1) damages; (2) delivery up to him of all copies and extracts made; and (3) an injunction restraining the servant from making use of the information thus improperly obtained. An injunction was refused to restrain a carrier from terminating an engagement with his manager when he had agreed not to require the said manager to leave his employ and determine their agreement, on the ground that although negative in form, it was positive and affirmative in substance (*i*). But an injunction was

(*e*) "*Star*" *Newspaper Co.* v. *O'Connor* (1893), 9 T. L. R. 526.
(*f*) *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416; 60 L. J. Ch. 428. See judgment of LINDLEY, L.J.
(*g*) *Merryweather* v. *Moore*, [1892] 2 Ch. 518; 61 L. J. Ch. 505.
(*h*) *Robb* v. *Green*, [1895] 2 Q. B. 315; 64 L. J. Q. B. 593; 59 J. P. 695; *Louis* v. *Smellie* (1895), 73 L. T. 226.
(*i*) *Davis* v. *Foreman*, [1894] 3 Ch. 654.

granted against an actor, who having contracted to act for a certain period in America with a company, one of the rules of which was that no member should be allowed to act at any other theatre without permission, left it, returned to England and entered into an engagement to act at a theatre in London. It was held that the negative stipulation against acting elsewhere could be enforced by injunction (*j*).

Conspiracy to interfere with contract of service.—It was decided in a recent important case (*k*) that a combination by two or more persons to induce others not to employ a particular individual is actionable, if done for the purpose of injuring that individual, and provided he is thereby injured.

Stamps.—No stamp is required to an agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant (*l*). Stokers on a steamship (*m*), an overseer in a printing office (*n*), are artificers, and a man engaged to look after a glebe is a labourer (*o*). By the *Customs and Inland Revenue Act*, 1869 (*p*), a duty of 15*s*. is payable for any male servant. Sub-section (3) of s. 69 of the Act defines the term male servant. No duty is payable if the engagement is to serve for a portion only of each day (*q*). Temporary waiters at a hotel (*r*), a man regularly employed as groom and yardman (*s*), have been held subject to duty.

(*j*) *Grimston* v. *Cunningham*, [1894] 1 Q. B. 125.
(*k*) *Temperton* v. *Russell*, [1893] 1 Q. B. 715; 62 L. J. Q. B. 412.
(*l*) 54 & 55 Vict. c. 39, sched. 1.
(*m*) *Wilson* v. *Zulueta* (1850), 14 Q. B. 405; 19 L. J. Q. B. 49.
(*n*) *Bishop* v. *Letts* (1858), 1 F. & F. 401.
(*o*) *Reg.* v. *Wortley* (1852), 21 L. J. M. C. 44; 11 Jur. 1137.
(*p*) 32 & 33 Vict. c. 14, s. 19.
(*q*) 39 & 40 Vict. c. 16, s. 5.
(*r*) *Spencer* v. *Schuman* (1821), 28 L. T. 873.
(*s*) *Yelland* v. *Vincent* (1883), 47 J. P. 230.

CHAPTER III.

The Consideration—Wages.

Consideration—express or implied.—The contract of hiring to be valid requires consideration which may be express or implied. To entitle a servant to wages no express agreement to that effect is required ; but every retainer of a servant will be presumed to be in consideration of wages until the contrary is shown, which may be done either by proving an express agreement that the services were to be rendered gratuitously as with a view to a legacy from the employer (*t*), or to being bound as an apprentice (*u*). Where, however, work is done in expectation of a legacy, the executor cannot be sued on a *quantum meruit* for it (*v*). But if there is from the circumstances of the case an implied promise to pay wages the servant may claim fair remuneration on a *quantum meruit*. Such a claim may be met by pleading cohabitation (*w*) or misconduct (*x*). A promise to pay a gratuity is no ground for action (*y*), unless it has been agreed that it shall form part of the wages (*z*).

When wages cannot be claimed.—If the amount of remuneration is left absolutely at the discretion of the master no action will lie for wages. Thus, for example, a person who had performed work for a committee

(*t*) *Le Sage* v. *Coussmaker* (1794), 1 Esp. 188.
(*u*) *Wilkins* v. *Wells* (1825), 2 C. & P. 231.
(*v*) *Osborn* v. *Guy's Hospital* (1726), 2 Stra. 728.
(*w*) *Bradshaw* v. *Hayward* (1842), Car. & M. 591.
(*x*) *Monkman* v. *Shepherdson* (1840), 11 A. & E. 411.
(*y*) *Parker* v. *Ibbetson* (1858), 27 L. J. C. P. 236.
(*z*) *Mansfield* v. *Scott* (1833), 1 Cl. & F. 329.

under a resolution "that any service to be rendered by him should be taken into consideration, and such remuneration should be made as should be deemed right," was unable to recover anything, Lord *Ellenborough* saying "it was an engagement accepted by the plaintiff on no definite terms . . . and who was thus throwing himself on the mercy of those with whom he contracted" (*a*). It is somewhat difficult to reconcile this view with some other decisions. For instance, where a manager wrote to his would-be employer saying "the amount of payment I am to receive I leave entirely to you," it was held that he was entitled to what a jury might award, on a *quantum meruit*, the amount, his employer acting *bonâ fide*, ought to have given (*b*): and a surgeon who, at the request of a board of guardians, attended pauper children attacked by cholera on a verbal understanding that they would pay him what they thought a right and proper remuneration, was entitled, not to accept 50*l.* offered him, but to maintain an action for what was proper recompense for his services, the amount to be ascertained by a jury (*c*). The distinction, if any, must be that where there is definite promise to pay something though undetermined, remuneration may then be recovered in proportion to the services rendered. On this principle a father who made a definite promise of a share of his business to his son, to be settled later on, was held liable to give the son what a jury should decide was a fair proportion (*d*). Again, reasonable remuneration, the actual amount to be determined by a jury, was held recoverable in the case of a tradesman who, at the defendant's request, and promise to "make him a

(*a*) *Taylor* v. *Brewer* (1813), 1 M. & S. 290.
(*b*) *Bryant* v. *Flight* (1839), 5 M. & W. 114.
(*c*) *Bird* v. *McGahey* (1849), 2 C. & K. 707.
(*d*) *Peacock* v. *Peacock* (1809), 2 Camp. 45.

handsome present," undertook to take care of his house, and shew it for the purpose of letting (*e*). It may at least be inferred from these cases that where there is no express agreement as to the amount of the wages or remuneration, or the same cannot be proved, a promise may be implied on the part of the master to pay the servant so much as his services are worth, which if disputed between them must be settled by a jury. If, however, there is a proviso in the agreement that the amount of remuneration is to be determined by some third person, then the servant cannot recover any wages without first applying to the third party to fix their amount (*f*).

Additional remuneration and extra work.—A servant is not entitled, in the absence of an express agreement, to extra remuneration beyond his ordinary wages for any extra work or duty, unless such work or duty is clearly outside that which he undertook to perform under the original contract of hiring. And even where there is a promise to pay additional wages, but no increase of the work, such promise cannot be enforced, for it is made without consideration (*g*). In a case (*h*) where a deputy to a clerk to Land Tax Commissioners sought to recover against the executor of his deceased principal increased salary for executing the duties of a new office to which the deceased had been appointed, it was observed that had the plaintiff's case rested wholly on the fact of the new duty being imposed upon him, he would not have been entitled to any additional salary on a *quantum meruit;* if it did, every porter in a shop, or clerk in an office, would upon an increase in his master's business be equally entitled to demand an

(*e*) *Jeury* v. *Busk* (1814), 5 Taunt. 302.
(*f*) *Owen* v. *Bowen* (1829), 4 C. & P. 93.
(*g*) *Harris* v. *Carter* (1854), 3 E. & B. 559.
(*h*) *Bell* v. *Drummond* (1791), 1 Peake, 63.

increase of wages, But upon the evidence it was clear that the testator himself thought he ought to pay something, and the only matter in dispute between him and his deputy was the amount of the allowance.

Absence from temporary illness.—If the contract does not otherwise provide, and no other arrangement is made, a servant temporarily absent from his work on account of illness will be entitled to his wages during his enforced absence. A brewer who had entered into an agreement to serve ten years at a weekly wage, with a house and coals, fell ill and was unable to do his usual work for thirteen weeks. After recovery he returned to his work and was paid as usual. He was successful in an action to recover his wages for the weeks he was away, on the ground that as the contract was not rescinded there was no suspension of the weekly payments (*i*). If, however, there is a distinct agreement that the servant shall be able to perform and shall actually perform the services contracted for, he would not be able to recover wages for any time during which illness prevented him from serving, although the hiring continued throughout (*k*).

What servant entitled to if dismissed.—Where a yearly servant (not menial) is dismissed for any cause which justifies the master in discharging him without notice, he cannot recover any of the year's wages, as the year must be completed before the servant is entitled to anything (*l*); and that even though the master may have recovered damages against him for the same act of misconduct (*m*). But menial servants would appear to

(*i*) *Cuckson* v. *Stones* (1853), 28 L. J. Q. B. 24.

(*k*) *Inglis* v. *East India Co.* (1851), 18 L. T. 93.

(*l*) *Spain* v. *Arnott* (1817), 2 Stark. 256; *R.* v. *Welford* (1778), Cald. 57; *Turner* v. *Robinson* (1833), 5 B. & Ad. 789; *Ridgway* v. *Hungerford Market Co.* (1835), 3 A. & E. 171; *Lilley* v. *Elwin* (1848), 11 Q. B. 742.

(*m*) *Turner* v. *Robinson*, *supra*.

be entitled to wages up to the day of dismissal, upon the ground, it is said, of that being the general understanding on the subject; unless, indeed, the dismissal be for embezzlement, in which case it has been ruled (*n*) that the amount of the embezzlement is immaterial, and that though the arrears of wages may exceed in value the amount embezzled the servant cannot recover any part of them.

If a clerk or other yearly servant (not menial) improperly without just cause leave his situation without notice, it seems to be doubtful whether he thereby disentitles himself to any unpaid part of the current year's wages, but by so doing he would unquestionably be liable to an action for leaving without notice (*o*).

Remedies of servant unjustly dismissed.—If a servant is dismissed without good cause he may either regard the contract as at an end, and sue his master on a *quantum meruit* for the wages due for the service he has actually rendered (*p*); or he may regard the contract as still existing and bring an action for damages (*q*); and he may do this whether his wages have been paid up to the time he was discharged or not; the maximum amount of such damage in the case of a domestic servant would be one month's wages (*r*); or he may wait until the time of the contract has expired and sue for the whole of his wages (*s*).

Receipts for, and application of wages.—It is well to be able to prove the payment of wages, and therefore

(*n*) *Brown* v. *Croft* (1828), 6 C. & P. 46.
(*o*) *Bird* v. *Randall* (1762), 3 Burr. 1345; *Huttman* v. *Boulnois* (1826), 2 C. & P. 510.
(*p*) *Lilley* v. *Elwin* (1848), 61 Q. B. 755; *Planché* v. *Colburn* (1831), 8 Bing. 14.
(*q*) *Gandall* v. *Pontignay* (1816), 1 Stark. 190; *Collins* v. *Price* (1828), 5 Bing. 132.
(*r*) *Fewings* v. *Tisdal* (1847), 1 Ex. 295.
(*s*) *Robinson* v. *Hindman* (1801), 3 Esp. 235.

receipts for the same should be taken; but if a servant has left his situation for any considerable time the presumption will be that he has been paid (*t*). The *Statute of Limitations* (*u*) includes claims for wages, so that they are barred after six years. When a servant is under age the master may be considered to stand as it were *in loco parentis*, and it will not be safe for him to advance money on account of wages without seeing to its proper application, for if spent on articles of finery or other unnecessary things, or expended in a way not for the servant's benefit, the master will be liable to pay it over again. This was the decision in a case (*x*) where the master advanced money to his infant female servant to buy a silk dress, lace, and other unnecessary articles to the value of 6*l*., and also money to pay the coach fare of her mother. It was held that the master could not set off against the servant's claim for wages, the moneys so paid, and that only as to so much as was for the purchase of necessaries, was the payment valid.

Breakages and losses by servant.—If goods are lost or broken by a servant the master cannot, in the absence of express agreement, retain out of, or set off against the servant's wages the value of the damage he has suffered (*y*). The master's only remedy is by proceeding against the servant, or, by refusing to pay the wages, enabling himself to set up a counter-claim when the servant brings an action for their recovery.

Provision of medical attendance for servant.—A master is not bound to provide his servant with medical attendance in case of illness or accident (*z*); but if a

(*t*) *Sellen* v. *Norman* (1829), 4 C. & P. 80.
(*u*) 21 Jac. I., c. 16.
(*x*) *Hedgley* v. *Holt* (1829), 4 C. & P. 104.
(*y*) *Leloir* v. *Bristow* (1815), 4 Camp. 134.
(*z*) *Newby* v. *Wiltshire* (1802), 3 B. & P. 247; *Winnell* v. *Adney* (1802), 3 B. & P. 247.

servant fall ill, and the master calls in his own medical man to attend on him, the master will not be permitted to deduct the amount of the doctor's bill from the servant's wages unless there is a special agreement between them that he should do so (*a*).

Adequacy.—Although it is essential to the contract of hiring that there should be consideration, the courts will not inquire into its adequacy. If there is some valuable consideration the law will not attempt to go behind it. It is for the parties to agree among themselves what its amount shall be (*b*). A verbal promise to work without wages is not binding (*c*).

Illegal and immoral contracts.—Any contract of hiring made for an illegal or immoral purpose is void. In an action (*d*) by a printer to recover from a publisher for work done in accordance with an agreement to print an obscene work, *Best*, C.J., said, "Every servant to the lowest engaged in such a transaction is prevented from recovering compensation."

If there are both good and bad considerations for the same entire promise, and one of such considerations is against the law the whole contract is void (*e*). In cases, therefore, where a female servant, hired at certain wages, has cohabited with her master she has been unable to recover any part of them, there not having been in law any contract between them (*f*).

Contracts in restraint of trade.—Any contract of hiring which necessitated a general restraint of trade would be void. Ever since the leading case of *Mitchel* v.

(*a*) *Sellen* v. *Norman* (1829), 4 C. & P. 80.
(*b*) *Hitchcock* v. *Coker* (1837), 6 A. & E. 438.
(*c*) *Lambert* v. *Northern* (1869), 18 W. R. 180.
(*d*) *Poplett* v. *Stockdale* (1825), 2 C. & P. 198.
(*e*) *Girardy* v. *Richardson* (1798), 1 Esp. 131.
(*f*) *R.* v. *Northwingfield* (1831), 1 B. & Ad. 912; *Bradshaw* v. *Hayward* (1842), Car. & M. 591.

Reynolds (*g*), decided as long ago as 1711, it has always been held that all contracts in general restraint of trade are void, but that limited restraints, if for good consideration, are legal (*h*). A number of manufacturers of cotton yarn and cloth entered into a bond which, among other things, determined the amount of wages to be paid to their workpeople and servants engaged in the factories (*i*). This bond was held to be illegal at common law, and in delivering the judgment of the Court of Exchequer Chamber, *Alderson*, B., said, "*Primâ facie*, it is the privilege of a trader in a free country, in all matters not contrary to law, to regulate his own mode of carrying it on according to his own discretion and choice. If the law has in any matter regulated or restrained his mode of doing this, the law must be obeyed; but no power short of the general law ought to restrain his free discretion. Now, here the obligors to this bond have clearly put themselves into a situation of restraint. First, each of them is prevented from paying any amount of wages, except such as the majority may fix, whatever may be the circumstances of the work to be done and his own opinion thereon; secondly, they can only employ persons for such times and periods as the majority may fix on, however much the minority may deem it for their interest to do otherwise. . . . We see no way of avoiding the conclusion that if a bond of this sort between masters is capable of being enforced at law, an agreement to the same effect amongst workmen must be equally legal and enforceable, and so we shall be giving legal

(*g*) *Mitchel* v. *Reynolds*, 1 Smith's L. C.

(*h*) *Collins* v. *Locke* (1879), L. R. 4 Ap. 674. See, however, the important case of *Nordenfeldt* v. *Maxim-Nordenfeldt Co.*, [1894] A. C. 535, and the judgment of Lord Herschell.

(*i*) *Hilton* v. *Eckersley* (1856), 25 L. J. Q. B. 199; 6 E. & B. 47. See also *Ward* v. *Byrne* (1839), 5 M. & W. 548; *Mallan* v. *May* (1843), 11 M. & W. 653.

effect to combinations of workmen for the purpose of raising wages, and make their strikes capable of being enforced by law."

By the *Trades Union Act*, 1871 (*k*), it was enacted that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful, so as to render void or voidable any agreement or trust.

Servant absolved from service if great additional risk.—If the risks of an enterprise for which a servant has been engaged at a fixed sum be intensified in the course of it, the servant is not bound to continue in the service of his master, and is entitled to the full sum bargained for (*l*).

Bankrupt servant.—If a servant becomes bankrupt the wages earned by him are not "salary or income" within the meaning of s. 53, sub-s. (2), of the Bankruptcy Act, 1883 (*m*), and therefore no order can be made under that section for payment of any part of such wages to his trustee in bankruptcy (*n*).

When agreement in writing not binding on servant.—A tramway conductor was held not precluded from bringing an action against his employers for wages, although he had signed an agreement to forfeit his wages for breach of the rules, because the manager refused him the opportunity of being heard on the question (*o*).

Procedure.—In case of a dispute about wages the servant should bring an action for their recovery in the *county court* if the amount is not more than 50*l*.

(*k*) 34 & 35 Vict. c. 31, s. 3.
(*l*) *O'Neil* v. *Armstrong*, [1895] 2 Q. B. 418.
(*m*) 46 & 47 Vict. c. 52.
(*n*) *In re Jones, Ex parte Lloyd* (No. 2), [1891] 2 Q. B. 231; *Cf. Gibson* v. *Carruthers* (1841), 8 M. & W. 343.
(*o*) *Armstrong* v. *South London Tramways Co.* (1891), 64 L. T. 96.

By consent of the parties the county court may deal with a larger amount. If the action is brought in the High Court, and not more than 20*l.* is recovered, the plaintiff will lose his costs unless the court especially decrees otherwise on the ground that there was sufficient reason for bringing the action in that court (*p*).

The *Employers and Workmen Act*, 1875 (*q*), enabling a court of summary jurisdiction to settle disputes regarding wages where the amount claimed does not exceed 10*l.*, does not apply to domestic or menial servants: they are expressly excluded.

The *Councils of Conciliation Act*, 1867 (*r*), does not apply to domestic servants nor to servants in industry.

(*p*) 51 & 52 Vict. c. 43, s. 116.
(*q*) 38 & 39 Vict. c. 90, s. 10.
(*r*) Conciliation Act, 1896 (59 & 60 Vict. c. 30).

CHAPTER IV.

Dissolution of the Contract.—Discharge.

The contract of hiring may be determined by the following causes:—

1. Death of either party to it.—It is dissolved by the death either of the master or of the servant. There could be no question on this point, as far as the servant is concerned, and with regard to the master, the case of *Farrow* v. *Wilson* (*s*) clearly decides the matter. The decision there was that a farm bailiff, who had been hired under a contract requiring six months' notice on either side for its determination, could not compel the administratrix of his late master to continue him in her service, nor to pay him the six months' wages. If, however, the executors of the deceased master continue the servant in their employ, the original contract being with the master and his executors, the latter will be liable. An engineer who entered into a six years' agreement of this nature was dismissed by the executors, after they had continued him in their employment and actually raised his salary. He was successful in action against the executors, and the jury awarded him 600*l*. (*t*).

2. Bankruptcy of the master does not in itself effect a dissolution of the contract. If, in fact, the servant continues to serve he would appear to be entitled to be paid *pro rata* for the time he so served (*u*); but if the service terminates directly the bankruptcy occurs, the contract would probably be held to have come to an end.

(*s*) *Farrow* v. *Wilson* (1869), L. R. 4 C. P. 764; 38 L. J. C. P. 326.
(*t*) *Darison* v. *Reeves* (1892), 8 T. L. R. 391.
(*u*) *Thomas* v. *Williams* (1834), 1 A. & E. 685.

Clerks and servants are entitled under the *Preferential Payments Act*, 1888 (*x*), repeating and re-enacting section 40, sub-section (1) (c) of the *Bankruptcy Act*, 1883 (*y*), to have four months' wages, if so much is due to them, and not exceeding 50*l*. Labourers and workmen are entitled to two months' wages up to 25*l*. Servants need not wait for the payment due to them under the Act until the affairs of the bankrupt have been investigated by his examination (*z*).

In the case of *Companies*, going into liquidation (*a*), or the appointment of a receiver (*b*) operates to discharge the servants. And passing a resolution to wind up a company operates as a notice of dismissal to the company's servants (*c*).

The creditors or the official receiver of a bankrupt's property cannot insist upon the fulfilment of the contract by the servant (*d*).

3. Change of the employers, as a change in the constitution of a firm of **partners.**—In the absence of an express agreement to the contrary, the death or retirement of one or more of the partners in a partnership firm dissolves any contract of hiring and service which has been entered into with the original firm (*e*). If there are two partners, and one of them gives a servant notice to leave, whilst the other gives him permission to remain, there is no discharge, and he may remain in his situation (*f*).

4. By notice.—(i.) In the case of **domestic servants**, a month's notice is requisite, or in lieu thereof a month's

(*x*) 51 & 52 Vict. c. 62. (*y*) 46 & 47 Vict. c. 52.
(*z*) *Ex parte Powis, Re Brown* (1874), 43 L. J. Bk. 24 ; 29 L. T. 654.
(*a*) *In re Oriental Bank Corporation* (*MacDowall's case*), (1886), 55 L. J. Ch. 620.
(*b*) *Reid* v. *Explosives Co.* (1887), 19 Q. B. D. 264.
(*c*) *Ex parte Schumann, Re Foster and Co.* (1887), 19 L. R. Ir. 241.
(*d*) *Gibson* v. *Carruthers* (1841), 8 M. & W. 343.
(*e*) *Tasker* v. *Shepherd* (1861), 30 L. J. Ex. 207 ; *Brace* v. *Calder*, [1895] 2 Q. B. 253.
(*f*) *Donaldson* v. *Williams* (1833), 1 Cr. & M. 345.

wages must be paid. If such a servant leaves his situation without just cause, or is for some good reason rightfully dismissed, he cannot recover any wages, which otherwise would be due since the date of the last monthly payment. For example, if the servant is paid monthly on the first of each month, and leaves without notice, or is dismissed on the 20th, he would be unable to recover any wages for the interval between the first and the 20th; and further might be subject to an action for damages by his master, which would be assessed probably in such a case at one month's wages (*g*). If, after proper notice, a servant refuses to leave, the master is justified in employing a certain amount of force to compel him to do so (*h*).

(**ii.**) In the case of **clerks** and other *superior servants* of this class, employed on a general hiring, that is to say a yearly one, neither party has the right to determine the contract, except for some good reason, which will be considered later, at any other period than at the expiration of the current year (*i*); but it has never been clearly decided what the length of notice must be, and the decisions on the point are anything but uniform. It would be wise always to give at least three months' notice, and in most cases this would no doubt be adequate. Clerks, commercial travellers, and governesses have been held entitled to three months' notice (*j*). The sub-editor of a daily newspaper has

(*g*) *Walsh* v. *Walley* (1874), 43 L. J. Q. B. 102; L. R. 9 Q. B. 267.
(*h*) *Mackay* v. *Ford* (1860), 29 L. Ex. 404; *Walsh* v. *Walley*, *supra*.
(*i*) This is by no means certain. See Best, C.J., in *Beeston* v. *Collyer* (1827), 4 Bing. 309; and Coleridge, J., in *Ryan* v. *Jenkinson* (1856), 25 L. J. Q. B. 11. But see Denman, C.J., in *Fawcett* v. *Cash* (1834), 5 B. & Ad. 904.
(*j*) *Gandall* v. *Pontigny* (1816), 1 Stark. 198; *Williams* v. *Byrne* (1837), 7 A. & E. 177; *Huttman* v. *Boulnois* (1826), 2 C. & P. 515; *Todd* v. *Kerrich* (1852), 22 L. J. Ex. 1; *Beeston* v. *Collyer* (1827), 4 Bing. 309; *Pottle* v. *Sharp* (1896), 65 L. J. Ch. 908; 75 L. T. 265.

been found by a jury to be entitled to six months' notice (*k*). Shortly after, the editor of a weekly newspaper was held entitled to twelve months' notice (*l*). And a foreign correspondent of the "Times," where no custom was proved, entitled to reasonable notice, and six months was considered reasonable (*m*).

When a servant may be dismissed without notice.—A servant may be dismissed without notice under certain circumstances, as wilful disobedience, grossly immoral conduct, habitual negligence, conduct such as to seriously injure his master's business, incompetency, illness causing permanent incapacity for work. Each of these will now be briefly considered.

(a.) **Wilful disobedience to lawful orders** (*n*).—The orders, the disobedience to which will justify dismissal, must be within the scope of the servant's duties. A man, for example, engaged as a lace buyer, refused to obey an order to card lace, and was consequently dismissed. It was held that there was no good ground for his dismissal, as carding was not within the scope of his work as buyer (*o*). The refusal, however, of a servant to obey his master's order to take his horse to the marsh until he had had his dinner, which was just ready, was considered good cause for dismissal (*p*). This principle has been carried to an extreme, as in the case of *Turner* v. *Mason* (*q*), in which a servant was dismissed for having visited, without leave, her dying mother. On the other hand, it was decided in an older case, that the absence of a servant without leave to

(*k*) *Chamberlain* v. *Bennett* (1892), 8 T. L. R. 234.
(*l*) *Brennan* v. *Gilbart Smith* (1892), 8 T. L. R. 284.
(*m*) *Lowe* v. *Walter* (1892), 8 T. L. R. 358.
(*n*) *Callo* v. *Brouncker* (1831), 4 C. & P. 518.
(*o*) *Price* v. *Mouatt* (1862), 11 C. B. (N.S.) 508.
(*p*) *Spain* v. *Arnott* (1817), 2 Stark. 256.
(*q*) *Turner* v. *Mason* (1845), 14 M. & W. 112.

find another situation, is not sufficient ground for dismissal (*r*). Speaking generally, the commands of the master must be reasonable if the disobedience is to justify dismissal (*s*). And no doubt cases might arise where disobedience on the part of the servant would be justifiable, as where a servant apprehended danger to his life or violence to his person. And if for any cause, such as infectious disease, a servant had good reason to believe his life depended on leaving the house, it is questionable whether the command of his master to remain in the house under such circumstances would be lawful (*t*).

A single act of disobedience, if it does not cause loss to the master, will not justify dismissal, though, if repeated, the servant might rightly suffer dismissal. A courier, for instance, was not justly dismissed for being sulky, and on one occasion engaging rooms at a hotel contrary to orders (*u*). Though the messman of a regiment, who refused for half-an-hour to serve up dinner, was held rightfully dismissed (*x*). And although a servant might be dismissed for repeated acts of insolence, being insolent once would hardly justify dismissal (*y*).

If dismissal for disobedience is based on the injury resulting therefrom to the master's business, it is essential that proof of such actual loss should be forthcoming (*z*). A waggoner refusing to work without extra beer (*a*), and a domestic servant for staying out all night (*b*), were held justly dismissed. Receiving

(*r*) *R.* v. *Polesworth* (1811), 2 B. & Ald. 483.
(*s*) *Jacquot* v. *Bourra* (1839), 3 Jur. 776.
(*t*) *Turner* v. *Mason* (1845), 14 M. & W. 112.
(*u*) *Callo* v. *Brouncker* (1831), 4 C. & P. 518.
(*x*) *Churchward* v. *Chambers* (1860), 2 F. & F. 229.
(*y*) *Edwards* v. *Leary* (1860), 2 F. & F. 94.
(*z*) *Cussons* v. *Skinner* (1843), 11 M. & W. 171.
(*a*) *Lilley* v. *Elwin* (1848), 11 Q. B. 742 ; 12 Jur. 623.
(*b*) *Robinson* v. *Hindman* (1801), 3 Esp. 235.

money contrary to an express agreement at the time of hiring is a sufficient cause for dismissal (*c*).

(b.) **Grossly immoral conduct.**—The following are instances of immoral conduct which the courts have held to justify dismissal in the case of domestic servants: Being found with child (*d*), though a servant cannot be compelled to be examined to see whether she is *enciente* (*e*). A man servant indecently assaulting a maid servant (*f*), and if the latter is in the same service, both may be dismissed (*g*). Habitual drunkenness (*h*). If a principle is to be found for these decisions, it may be that such conduct in one so closely associated with the house and family of the master, as a domestic is, must seriously injure the master's family. It is in harmony with this principle that servants not resident in the master's house and employed in outside work are not dismissable for immorality unconnected with their service (*i*). It would appear, if the case of *Fletcher* v. *Krell* (*k*) is to be relied on, that misconduct previous to entering into service which requires residence in the master's house will not justify dismissal. It this case, a lady obtained the situation of governess in a gentleman's family, and in her application for the post described herself as a spinster, whereas she was in reality a divorced woman. This was the plea set up by the master in defence of an action brought for breach of contract, and the plea was held bad, as there was no allegation of fraud.

(*c*) *Bray* v. *Chandler* (1856), 8 C. & P. 80.
(*d*) *R.* v. *Brampton* (1777), Cald. 11.
(*e*) *Latter* v. *Braddell* (1881), 50 L. J. Q. B. 448; 44 L. T. 369.
(*f*) *Atkin* v. *Acton* (1830), 4 C. & P. 208.
(*g*) *R.* v. *Welford* (1778), Cald. 57.
(*h*) *Spark* v. *Phillips* (1839), 5 M. & W. 279; *Farquhar* v. *Naish* (1893), 17 C. of Sess. Cas. 716 (Sc.).
(*i*) *Read* v. *Dunsmore* (1840), 9 C. & P. 594.
(*k*) *Fletcher* v. *Krell* (1873), 42 L. J. Q. B. 55; *Cf. Andrews* v. *Garstein* (1861), 31 L. J. C. P. 15.

For noisy and turbulent conduct late at night, a servant may not only be dismissed, but may be given into custody (*l*).

Theft (*m*) or embezzlement (*n*) from his master would, of course, justify dismissal. But where a school teacher was dismissed a fortnight after being arrested on a criminal charge, it was held that proper notice had not been given, and that an injunction was rightly applied for immediately the letter of dismissal was received, and 40*l*. damages were awarded (*o*). A surveyor who was wrongfully dismissed because a charge of defrauding a railway company was brought against him, applied for an injunction to restrain the county council from dismissing him. The court decided that the plaintiff was, on the evidence brought before it, entitled to a declaration that he was not guilty of the offence with which he had been charged. The actual injunction being left over for consideration later if occasion should arise (*p*).

A master would be justified in dismissing a clerk whom he found had been engaged in gambling in differences on a large scale (*q*).

(c.) **Incompetence or unskilfulness.**—Any one who holds himself out as possessing special skill in any particular direction, and is engaged on the faith of his profession, may be dismissed if he shows himself grossly incompetent. For instance, a scene painter who showed gross unskilfulness in the work he had undertaken (*r*). The superintendent of a railway contractor's works at 350*l*. a year, paid monthly, being dismissed for

(*l*) *Shaw* v. *Chairritie* (1850), 3 C. & K. 21.
(*m*) *Cunningham* v. *Fonblanque* (1833), 6 C. & P. 44.
(*n*) *Spotswoode* v. *Barrow* (1850), 5 Exc. 110; 19 L. J. Ex. 226.
(*o*) *Kemp* v. *Caddington School Board* (1893), 9 T. L. R. 301.
(*p*) *Parsons* v. *London County Council* (1893), 9 T. L. R. 619.
(*q*) *Pearse* v. *Foster* (1886), 17 Q. B. D. 536.
(*r*) *Harmer* v. *Cornelius* (1858), 28 L. J. C. P. 86.

incompetence, was able to recover only a month's salary (*s*). This principle would hardly apply to the ordinary domestic servant who may be said to be always knowingly taken with all faults. When, however, a domestic servant is hired for a special purpose, and that alone, and higher wages are paid on that understanding, as in the case of a skilled cook, dismissal for incompetence would no doubt be held justifiable.

(d.) **Negligence.**—Habitual negligence on the part of the servant such as will cause injury to his master's business is good ground for his dismissal. This was laid down by *Parke*, J., in his judgment in the case of *Callo* v. *Brouncker* (*t*). In a later case, the manager of an ironworks, engaged for three years on the understanding that he would use his best endeavours to promote the interests of his employer, failed in an action for wages, after being dismissed before the completion of the term for negligence in so doing (*u*).

The foreman of a firm of silk manufacturers who was dismissed for having advised and assisted their apprentice to quit their service, and go to America, not only failed to recover wages on the ground that his dismissal was unjustifiable, but his employers recovered damages against him (*x*). If a clerk who is employed to conduct his master's business sets up a claim to be a partner, his master is justified in dismissing him instantly from his service (*y*).

A clerk employed by a company to enter proceedings in their minute book, wrote on the margin of the book a protest in his own name against a summons to appoint his successor. In an action brought by him for

(*s*) *Scarle* v. *Ridley* (1873), 28 L. T. 411.
(*t*) *Callo* v. *Brouncker* (1831), 4 C. & P. 518.
(*u*) *Arding* v. *Lomax* (1855), 24 L. J. Ex. 80.
(*x*) *Turner* v. *Robinson* (1833), 5 B. & Ad. 789.
(*y*) *Amor* v. *Fearon* (1839), 9 A. & E. 548.

wrongful dismissal, it was held that the jury were justified in finding this to be a sufficient cause for dismissal (*z*). If a servant has been engaged in practices—as, for example, gambling on the Stock Exchange—which may put him in such a position as to lay him open to very strong temptation to seriously neglect, or even injure his master's business, the master would, on becoming aware of the fact, be justified in instantly dismissing him. This was clearly decided in the case of *Pearce* v. *Foster* (*a*), when Lord *Esher*, M.R., in his judgment, said: "The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has the right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. . . . If a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed by his master. . . . I should like to say in plain terms, so that it may be understood, that the moment it is made known to a master that his clerk has been gambling to anything like this extent on the Stock Exchange, that of itself will authorize any tribunal in saying that the master was justified in dismissing the servant."

A merely temporary negligence which results in no real loss to the master, will not warrant the servant's dismissal. This was the decision arrived at in the case of a French master in a school, who came back four days late after the holidays. There was no proof that his employer had suffered any loss in consequence in the

(*z*) *Ridgway* v. *Hungerford Market Co.* (1835), 3 A. & E. 171.
(*a*) *Pearce* v. *Foster* (1886), 17 Q. B. D. 536; 55 L. J. Q. B. 306.

carrying on of his school, and he was, therefore, not justified in terminating the engagement (*b*). A servant entrusted with his master's goods would be dismissible for negligence if he did not take proper care of them; but where he loses them as the result of irresistible violence, *e.g.*, robbery, he would not be adjudged guilty of negligence (*c*).

If a master dismiss a servant without good reason, he may justify such dismissal by showing that there was just cause for the dismissal at the time. This was first decided in the case of *Ridgway* v. *Hungerford Market Co.* (*d*), and this decision was followed shortly after in another case (*e*), in which an accountant was held rightfully discharged for having made a false entry and representation, though the reason assigned for his discharge was disrespect towards his employer. *Tindal*, C.J., remarked in his judgment: "I am not prepared to say that when a party is discharged on good ground and a reason is assigned at the time, another reason may not afterwards be proved, as in *Crowther* v. *Ramsbotham* (*f*), where in trespass for breaking and entering the plaintiff's close and taking his goods, it was held, that the defendant might justify under a sufficient legal process if he had it in fact at the time, although he declared then that he entered for another cause." Again in *Cussons* v. *Skinner* (*g*), where it was decided that the proprietors of a cotton factory could plead in justification of the discharge of their manager, an act of misconduct known to them at the time, though he was, in fact, dismissed on other grounds. As to whether the master must be *aware* of the misconduct which

(*b*) *Fillent* v. *Armstrong* (1837), 7 A. & E. 557.
(*c*) *Walker* v. *British Guarantee Assoc.* (1852), 18 Q. B. 277; 21 L. J. Q. B. 257.
(*d*) *Ridgway* v. *Hungerford Market Co.* (1835), 3 A. & E. 171.
(*e*) *Baillie* v. *Kell* (1838), 4 Bing. N. C. 638.
(*f*) *Crowther* v. *Ramsbotham* (1793), 7 T. R. 754.
(*g*) *Cussons* v. *Skinner* (1843), 11 M. & W. 161; 12 L. J. Ex. 347.

would justify dismissal at the time he gave his servant notice, the decisions are somewhat conflicting. In the last-mentioned case, *Parke*, B., clearly laid it down that *scienter* at the time of dismissal was material; in his judgment, the learned baron said: "It would be necessary for the defendants, to justify the discharge, to show that at the time the discharge took place they knew at least of the act of misconduct (*g*)." And a little later, it was decided that a solicitor was bound to show that he knew of the misconduct alleged in the justification of the dismissal of his articled pupil, viz., that he had set his clients against his master, before he dismissed him (*h*). In *Spotswoode* v. *Barrow* (*i*), a case tried some time after those just mentioned, it appears doubtful from the reports whether knowledge at the time of dismissal was considered essential. *Alderson*, B., is reported to have said: "All the defendants undertake to prove is, that they had justifiable cause for the dismissal." This case was referred to at some length by *Bramwell*, B., in his judgment in *Cowan* v. *Milbourn* (*k*), and makes it clearer that in the report, that knowledge is not necessary. This is certainly the decision in a case (*l*) decided in the same year, in which it was laid down, that if an employer discharge his servant, and at the time of the discharge, a good cause for dismissal in fact exists, the employer is justified in discharging the servant, although at the time of the dismissal, the employer did not know of that cause. And this was followed in a recent case of the dismissal of a managing director of a company. Receiving a commission from a shipbuilding company was held to be a good ground for dismissal, although not discovered

(*h*) *Mercer* v. *Whall* (1845), 5 Q. B. 447.
(*i*) *Spotswoode* v. *Barrow* (1850), 5 Ex. 110.
(*k*) *Cowan* v. *Milbourn* (1867), 36 L. J. Ex. 124.
(*l*) *Willets* v. *Green* (1850), 3 C. & K. 59.

until after the dismissal had taken place. It was also decided, that his salary being payable yearly, and he being dismissed for misconduct, he was not entitled to any part of the unpaid salary for the current year of his service (*n*).

(e.) **Permanent illness.**—If a servant suffer from temporary illness, and the contract of hiring is not rescinded, and there is no express agreement on the matter, dismissal will not be justifiable; but if the ilness is permanent, it is good ground for discharging the servant (*o*). Where, however, illness is temporary, and, indeed, last for only a very short time, yet if it is of vital importance to the proper carrying out of the contract, goes, in fact, to the root of the matter, the employer is justified in rescinding the contract, and appointing another person in the place of the servant rendered *hors de combat* at the critical moment by illness. This is what happened in the case of an opera singer who was too ill to attend the later rehearsals and the first four performances of an opera in which she had contracted to sing and play. Her employers were held justified in appointing a substitute and rescinding the contract (*p*). But being prevented from attending merely the rehearsals, is not sufficient ground for dismissal (*q*).

The illness of a clerk caused by an act of misconduct before he entered into the contract of hiring, but which he did not know at that time would lead to his illness and render him incapable of doing his work, was held not to justify his dismissal though he was kept away from business for more than a month (*r*).

(*n*) *Boston Deep Sea Fishery Co.* v. *Ansell* (1888), 39 Ch. D. 339; 59 L. T. 345.
(*o*) *Cookson* v. *Stones* (1859), 28 L. J. Q. B. 25; 1 E. & B. 248.
(*p*) *Poussard* v. *Spiers and Pond* (1876), 1 Q. B. D. 414.
(*q*) *Bettini* v. *Gye* (1875), 1 Q. B. D. 183; 45 L. J. Q. B. 209.
(*r*) *Reg.* v. *Ruschen* (1878), 38 L. T. 38; 42 J. P. 264.

CHAPTER V.

The Rights and Duties of Master and Servant.

Rights and duties of the parties reciprocal.—There are reciprocal duties between masters and servants. From the servant is due obedience and respect, from the master protection and good treatment, are words spoken nearly a century ago by a distinguished and most humane judge (*s*). The servant, having agreed to a contract of hiring and service, it becomes his duty to enter upon that service and to obey all lawful orders, and to work at all reasonable hours when required. If he fails to do so, an action may be brought against him by his master, though such a course is scarcely desirable from the master's point of view since the means of the servant will usually not permit of any substantial damages being recovered. Reciprocally it is the duty of the master to receive the servant into his service as agreed upon, and if he refuses to do so for no just cause, the servant may bring an action against him for breach of contract, provided he is not precluded from doing so by the Statute of Frauds (*t*). If a master openly avers that it is not his intention to keep the contract he has made to take the servant into his service, the servant may immediately bring an action, and need not wait until the date when the contract of service begins (*u*).

Rights of the master.—In the absence of any stipulation on the subject, a servant hired under a general hiring may at any time be required by his master to

(*s*) Lord Kenyon in *Limland* v. *Stephens* (1801), 3 Esp. 269.
(*t*) *Bracegirdle* v. *Heald* (1818), 1 B. & Ald. 722.
(*u*) *Hochster* v. *De La Tour* (1853), 2 E. & B. 678; 22 L. J. Q. B. 455.

perform any lawful and reasonable service whatever (*x*); and the servant is bound to execute the same with all reasonable dispatch, and to the best of his ability. This general right is however so universally restrained, either expressly or by implication, that the limited right may be considered the rule, and the general right the exception. It may be expressly limited by a stipulation that the servant shall only be required to render certain defined services, or that certain others shall not be required of him, or as is more commonly the case it may be impliedly restrained by hiring the servant to fill a particular capacity.

What orders are reasonable.—In order to ascertain therefore whether a master is entitled to exact from his servant any particular service, it is necessary to inquire first, "What were the services contracted for?" and secondly, "Does the service required come within the scope of them?" Where the servant has only agreed to render certain definite services, as to collect moneys, or to solicit orders for his employer, or even to act as a clerk, questions can seldom, if ever arise; nor indeed, where the hiring is general, and the only stipulation is with regard to the services which shall not be required or rendered. The difficulty chiefly arises in respect to menial servants where the limitations of the master's general rights is merely to be implied by reason of the servant having been hired to fill a particular capacity. In this case if the scope of the servant's contract is only to be ascertained by defining what are the peculiar duties attached to his situation, to the exclusion of all others, the question would seem to be open to endless discussion, from the infinitely varied customs in different families. But if the true construction of such a contract on the part of the servant be that the

(*x*) *Turner* v. *Mason* (1845), 14 M. & W. 112; 14 L. J. Ex. 311.

servant engages to perform the duties peculiarly incident to that capacity, and in subordination thereto to perform such other reasonable services as the master may require of him, and his time will allow, the difficulty is greatly diminished. The usual custom of servants, before engaging themselves, of inquiring what other servants are kept, strongly countenances, such a view, on their part at least, of the contract. If it were otherwise there would be violation of the principle before stated, that the master is entitled to require his servant to work at all reasonable hours, during the continuance of the contract. The question whether the service required comes within the scope of those contracted for would therefore appear to resolve itself into whether or not such service is reasonable, as regards the servant concerned. That the courts are not disposed to narrowly limit the master's judgment as to what are reasonable orders, was shown in the case of *Spain* v. *Arnott* (*y*), in which a servant who usually breakfasted at five o'clock in the morning and dined at two, was ordered by his master to take a horse to the marsh, about a mile away, just as dinner was ready, and upon his refusal to go until he had dined, was instantly discharged by his master, and one of the questions raised at the trial was the propriety of such a dismissal. It was then said by Lord *Ellenborough* that by persisting in his refusal to obey his master's orders "the master was warranted in turning him away . . . . there is no contract between the parties except that which the law makes for them, and it may be hard upon the servant, but it would be exceedingly inconvenient if the servant were permitted to set himself up to control his master in his domestic regulations, such as the time of dinner . . . . . In this instance it

(*y*) *Spain* v. *Arnott* (1817), 2 Stark, 256.

might be very inconvenient for the master to change the hour of dinner. After a refusal on the part of a servant to perform his work, the master is not bound to keep him on as a burthensome and useless servant to the end of the year. The question really comes to this, whether the master or the servant is to have the superior authority."

Servant must not be unreasonable.—Conversely, unreasonable demands by the servant may justify the master in putting an end to the contract. A waggoner, for example, was held rightly dismissed for refusing to work at harvest time until eight in the evening, because suitable beer was not supplied (*z*). And the refusal of the messman of a regiment to send up dinner for half-an-hour was considered reasonable ground for his dismissal (*a*).

Capacity and status of servant.—In determining whether any given service may or may not reasonably be required of a servant, hired to fill a particular capacity, not only must the nominal rank or class of the servant be taken into consideration, but also his real and acknowledged station in society as an individual. To take, for example, the class of clerks. What would be reasonable in the case of one engaged in simple routine work requiring little education, and involving no responsibility, hired at a weekly wage, might be very unreasonable in that of one placed in a position of responsibility and confidence, at a large yearly salary, and of superior education. Where a lace buyer was ordered to card lace and on his refusal to do so was discharged by his employer, the jury found that carding lace was not within the scope of his duties, and therefore the order was not reasonable (*b*).

(*z*) *Lilley* v. *Elwin* (1848), 11 Q. B. 742; 17 L. J. Q. B. 132.
(*a*) *Churchward* v. *Chambers* (1860), 2 F. & F. 229.
(*b*) *Price* v. *Mouatt* (1862), 11 C. B. (N.S.) 508.

Orders accompanied by danger.—Orders involving risk, not in view when the contract was made, such as from the presence of infectious disease, or from fear of personal violence, are not reasonable, and the servant would be justified in not obeying them (*c*).

Domestic regulations by master.—In addition to the performance of certain services a master may lay down and insist upon the observance by his domestic servants of such rules for the regulation of his household as he may think proper, and provided the same be reasonable and the infringement of them interfere with the due economy of the family, there can be no reason to doubt the right of the master to dismiss without notice a servant who wilfully broke or habitually neglected such rules (*d*).

Master entitled to servant's earnings.—The master has a right to all the earnings of his servant which he gains whilst acting as servant, and will be able to recover the same from the servant if he works for a third party, whether that work be undertaken with or without his consent (*e*). The master will be able to recover from the third party only when permission has been given to the servant to work for him; the servant then may be regarded as the agent of his master.

Inventions by servants.—A master as such has no right to an invention because the inventor happens to be his servant at the time (*f*); but if the servant be expressly employed on account of his skill to invent or design, any inventions or designs made by him will

(*c*) *Turner* v. *Mason* (1845), 14 M. & W. 112; 14 L. J. Ex. 311. *Woodley* v. *Metropolitan District Rail. Co.* (1877), 2 Ex. D. 384; 46 L. J. Ex. 521.

(*d*) *Robinson* v. *Hindman* (1801), 3 Esp. 235.

(*e*) *Morison* v. *Thompson* (1874), 43 L. J. Q. B. 215.

(*f*) *R.* v. *Arkwright* (1785), 1 Web. P. C. 71; *Re Russell's Patent* (1857), 30 L. T. 178; 2 De G. & J. 130.

belong to his master, and the master will be able to register or patent them (*g*).

May a master chastise his servant.—As regards the right of the master to chastise his servant the old authorities appear to recognize such a right, but it may well be doubted whether such a right exists at the present day. Whilst the infliction of corporal punishment by the master may be permissible (*h*) in the case of young servants under age on the principle that the master stands to some extent *in loco parentis*, it will at least in the case of servants of full age be in the words of *Blackstone* "good cause of departure" (*i*). If death followed the infliction of such punishment the master would be guilty of manslaughter (*k*). It has been expressly decided that an upper servant has no right to chastise a lower one (*l*).

If servant injures master.—For breach of contract, express or implied, and for wanton damage, a master has precisely the same rights and remedies against his servant as against any other person, however inexpedient it may be to pursue the same on account of the inability, usually, of the servant to pay the consequent damages and costs. For personal injury amounting to a breach of the peace the master would be justified in giving the servant into the custody of the police (*m*).

If a servant knowingly make his master break his covenant he is liable in damages (*n*).

Duty of servant to be diligent.—It is the duty of a

(*g*) *Makepeace* v. *Jackson* (1813), 4 Taunt. 770; *Bloxam* v. *Elsie* (1825), 1 C. & P. 558; *Shepherd* v. *Conquest* (1856), 25 L. J. C. P. 127; *Nottage* v. *Jackson* (1883), 52 L. J. Q. B. 760; 11 Q. B. D. 627.
(*h*) *Winstone* v. *Linn* (1823), 1 B. & C. 460; Holroyd, J.
(*i*) 1 C. 427.
(*k*) *Reg.* v. *Leggett* (1838), 8 C. & P. 191.
(*l*) *Reg.* v. *Huntley* (1854), 3 C. & K. 142.
(*m*) *Shaw* v. *Chairitie* (1850), 3 C. & K. 21.
(*n*) *Hussy* v. *Pacy* (1667), 1 Lev. 188.

servant to regard with care and diligence the interests of his master, and to exercise the same vigilance and attention as his master himself would have done. If he undertakes an office of skill he impliedly represents himself to be possessed of the skill requisite for the due discharge of the functions of his office, and will be liable for a breach of contract if he does not possess that skill, or if possessing it he fails to exercise it.

Duty of servant to be careful of his master's property.—It is the duty of the servant to take proper care of the goods of his master entrusted to him, but the master cannot recover against his servant for any such goods accidentally lost or damaged by him unless negligence also be shown (*o*), and then he cannot retain the amount of the damage out of the servant's wages, unless it has been so stipulated in the contract of hiring (*p*).

Clerks and stewards must account for moneys received.—It is the duty of a clerk, or other servant employed to receive and pay money for his master, to keep and render true and explicit accounts and vouchers (*q*), and of a steward to account periodically, although not called upon to do so, and if through neglect in this respect he should at a future time be unable to vouch his accounts, the Court of Chancery will not assist him (*r*).

Duty of the master to protect young servants.—It is the master's duty to protect young servants, and if the master so abuse his position as to be the cause of the seduction or prostitution of a servant under sixteen

(*o*) *Countess of Salop* v. *Crompton* (1601), Cro. Eliz. 777; *Savage* v. *Waltham* (1708), 11 Mod. 135; *Nickson* v. *Brohan* (1713), 10 Mod. 109; *Pritchard* v. *Hitchcock* (1843, 6 M. & G. 165, Cresswell, J.

(*p*) *Leloir* v. *Bristow* (1815), 4 Camp. 134.

(*q*) *Jenkins* v. *Gould* (1827), 3 Russ. 385.

(*r*) *Ormond* (*Lady*) v. *Hutchinson* (1806), 13 Ves. 53, 92.

years of age, there is power by statute (*s*) to remove her from his service, and place her in charge of any suitable person ready to take her.

Duty of master to pay wages agreed on.—It is the duty of the master to pay the wages agreed on (*t*) in the contract of hiring, and the parties cannot be too clear and explicit in this respect in order to prevent subsequent misunderstanding and dispute. This is especially desirable when the master is a relative, as a father or brother, for in such a case it might be contended that board and residence were sufficient consideration, and the law would not necessarily infer, in the absence of an express agreement, that wages were to be paid. Under such circumstances it would be for a jury to decide (*u*).

Duty of master to provide food if agreement to do so.—Where by the contract of hiring there is an agreement, either expressed or implied, that the servant shall be provided with food, it is the master's duty to supply the same, and in case of his failing to do so, the servant may recover against him for breach of the contract, and would no doubt be justified in leaving his master's service without notice, but he would probably not in consequence be entitled to obtain the food requisite for his maintenance by pledging his master's credit. Formerly the only redress the servant had was a civil one for breach of contract, unless he was of tender years and under the dominion and control of the master (*x*). In such case it was considered a misdemeanor for the master or mistress to refuse, or to neglect to provide such a servant with sufficient food or other necessaries so as thereby to injure his health (*y*),

(*s*) 48 & 49 Vict. c. 69, s. 12.
(*t*) See Chap. III.
(*u*) *Davies* v. *Davies* (1839), 9 C. & P. 89.
(*x*) *R.* v. *Ridley* (1811), 2 Camp. 650.
(*y*) *R.* v. *Friend* (1802), Russ. & Ry. 22.

and if death ensued they might be indicted for murder, or at least manslaughter. The expression "tender years" was interpreted in a notorious case (*z*) as meaning under sixteen years of age. Servants above this age were therefore not protected until the Legislature stepped in and by statute (*a*) enacted that "where a master, being legally liable to provide for his servant necessary food, clothing, medical aid or lodging, shall wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of such servant is, or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding 20*l.*, or to be imprisoned for a term not exceeding six months, with or without hard labour." Under certain circumstances where bodily injury is inflicted on servants under sixteen years of age, for which the party committing it is liable to be indicted, and the circumstances of which offence amount in point of law to a felony, or an attempt to commit a felony, the guardians or overseers may be required to prosecute, and the cost of the prosecution may be paid out of the common fund of the union, and the clerk to the guardians may be bound over to prosecute (*b*). From the remarks of the judges in the case of *Reg.* v. *C. J. Smith* (*c*) when reviewed and the conviction quashed by the Court for Crown Cases Reserved it clearly appears that if a master wilfully *neglects* to supply proper food and lodging to his servant at a time when the servant is reduced to such an enfeebled state of body or mind as to be helpless and

(*z*) *Reg.* v. *Sloane, et Ux.* (1851), 33 Sess. Pap. (C. C. C.) 482.

(*a*) 14 & 15 Vict. c. 11, s. 1, repealed by 24 & 25 Vict. c. 95, s. 1, and re-enacted by 24 & 25 Vict. c. 100, s. 26, partly repealed by S. L. R. Act, 1892 (55 & 56 Vict. c. 19); See also 38 & 39 Vict. c. 86, s. 6 (Conspiracy and Protection of Property Act, 1875).

(*b*) 24 & 25 Vict. c. 100, s. 73.

(*c*) *Reg.* v. *C. J. Smith* (1865), 34 L. J. M. C. 155. See especially the judgments of Erle, C.J., and Blackburn, J.

unable to take care of himself, or is so under the dominion and restraint of his master, as to be unable to withdraw himself from his control, and the death of the servant is caused or accelerated by such neglect, the master is liable to be convicted of manslaughter.

How far master's duty to provide medical attendance.—It is not the duty of the master to supply his servant with medical attendance and medicine when ill, nor surgical aid if he meet with an accident, unless there has been an agreement to that effect, or from the circumstances it may be implied that he has undertaken or consented to do so. This is the conclusion to be drawn from an examination of the various cases dealing with the subject which however, at a first glance, seem to be somewhat conflicting. If the master direct a doctor to attend his servant there can be no doubt of his liability to pay, for even a mere stranger asking a medical man to attend a poor person will be liable to pay him for his trouble (*d*). In a case (*e*) at *nisi prius* for the recovery of an apothecary's bill for medicine and attendance provided to the servant of the defendant, Lord *Kenyon*, C.J., said "he was of opinion that the master was obliged to provide for his servant in sickness and in health, and that therefore he was liable for medicines furnished to his servant while in his service; not that his servant was at liberty to go alone and contract debts for medicines, but that while he was under his master's roof, the master was under a legal as well as a moral obligation to provide the necessary medicines, and to pay for such as were administered to his servant under such circumstances." This opinion was endorsed not long after in another case (*f*) at *nisi prius* by Lord *Eldon*, C.J.

(*d*) *Watling* v. *Walters* (1823), 1 C. & P. 132.
(*e*) *Scarman* v. *Castell* (1795), 1 Esp. 270.
(*f*) *Simmons* v. *Willmott* (1800), 3 Esp. 91.

The liability of the master for medical attendance furnished to his servant has often been raised in cases where servants have received such assistance from the *Poor Law Authorities* who have endeavoured to recoup themselves by bringing an action against the master for moneys they have so expended. From various decisions it is plain that the parish authorities are liable for medical aid supplied to a servant, who from illness is unable to support himself, and in the absence of any express agreement between master and servant they cannot recover the cost of such medical assistance from the master. Thus where a farmer's servant whilst attending his master's waggon had broken his leg, it was held that the master was not liable to reimburse the parish for medicines supplied to his servant, and Lord *Mansfield* said, "there is, in point of law, no action against the master to compel him to repay the parish for the cure of his servant; the parish is bound to take care of accidents" (*g*). The parish which gives the medical assistance cannot recover from an adjoining parish where the accident actually took place, if the overseers knew of the surgeon's attendance and did not repudiate it, for this is equivalent to a request on their part (*h*). But a surgeon who attended a pauper in a parish other than that of his settlement, which latter allowed him 4*s*., recovered the amount of his medical attendance from the latter parish (*i*). In the case of a servant in industry requiring medical aid, the overseers of the parish in which he is legally settled at the time are liable for such medical attendance and medicines as may have been supplied (*k*), and consequently the master of such a servant would not be liable

(*g*) *Newby* v. *Wiltshire* (1785), 2 Esp. 739.
(*h*) *Lamb* v. *Burne* (1815), 4 M. & S. 275.
(*i*) *Wing* v. *Mill* (1817), 1 B. & A. 104.
(*k*) *Watson* v. *Turner* (1767), Bull. N. P. 147.

unless he expressly desired a medical man to attend him, or has so acted that it may be implied he has undertaken to supply the servant with medical attendance in illness. An overseer who neglects to provide medical aid for a pauper in illness is indictable, and that although the pauper has never received or been in need of relief before (*l*).

The decision of Lord *Kenyon* was overruled, the law being laid down both as regards the liability of the master to his servant and to the poor law authorities in the important case of *Wennall* v. *Adney* (*m*). This was an action brought by a surgeon against the master to recover the cost of medicine and attendance furnished to his servant who had broken his arm whilst driving his master's team, and who had been hired at the yearly wage of 3*l*. 10*s*. and his victuals. *Le Blanc*, J., nonsuited the plaintiff on the ground that the defendant, not having employed him, nor made any promise of payment, was not liable. On discharging a rule *nisi* to set aside the non-suit, the several judges delivered their opinions at length. Lord *Alvanley*, C.J., said, "I have reason to believe that the opinion delivered by Lord *Kenyon* in the case of *Scarman* v. *Castell* was not a hasty opinion, but formed upon reflection. I have, however, no difficulty in saying that I concur with the learned judge before whom this case was tried, in thinking that the defendant is not liable . . . In this kind of question much may depend upon the nature of the contract entered into between the master and the servant . . . It is sufficient to observe that previous to the case of *Scarman* v. *Castell* there is no authority in the law of England to be found which warrants the position contended for by the plaintiff. I have no

(*l*) *R.* v. *Warren* (1803), Russ. & Ry. C. C. R. 482.
(*m*) *Wennall* v. *Adney* (1802), 3 B. & P. 247.

doubt whatever that the parish officers are bound to assist where such accidents as this take place, and that the law will so far raise an implied contract against them as to enable any person who offers that immediate assistance, which the necessity of the case usually requires, to recover against them the amount of money expended." *Heath*, J. added, "I believe the humanity of Lord *Kenyon* misled him when he adopted the doctrine upon which he decided the case of *Scarman* v. *Castell*. Probably at the moment it occurred to him, that if the master was not bound to provide medical assistance for his servant, the latter would be left wholly destitute, but I am perfectly sure it is more for the advantage of servants that the legal claim for such assistance should be against the parish officers, rather than against the master, for the situation of many masters, who are obliged to keep servants, is not such as to enable them to afford sufficient assistance in cases of serious illness." *Rooke* and *Chambre*, JJ., concurred, the former observing, "If the general principle contended for by the plaintiff were to be adopted as a rule of law, many persons who are obliged, for the purposes of their trade, to keep a number of servants would be unable to fulfil the duty imposed upon them by the law. It must be left to the humanity of every master to decide whether he will assist his servant according to his capacity or not."

Where a master had called in a medical man to attend his servant, and sought to deduct the amount of the doctor's bill from her wages, it was held that he could not do so, and *Gaselee*, J., said, "I am not prepared to say that a master is bound to provide a menial servant with medicines; with respect to some other servants he clearly is not so; however, though it is often done by masters for their menial servants, I do

not think I should be authorized in saying that they are bound to do so" (*n*).

That a master may render himself liable to pay for the medical aid given to his servant in consequence of his acquiescence and knowledge implying a contract to supply it, is shown by the case of *Cooper* v. *Phillips* (*o*), which also brings out clearly when the master is and when he is not liable to pay such charges. The facts of this case were as follows: It was an action by a surgeon for medical attendance on the defendant and his family, and it appeared that the defendant and his wife resided at a distance of about a mile and a half from a house in which their younger children were living under the charge of Susan Parry, who had acted as wet nurse to two of the youngest children. The defendant's wife was in the habit of going to see the children three or four times a week, but it did not transpire when the defendant himself was at the house. Susan Parry was taken ill in consequence of suckling the youngest of the children, and was attended for this complaint by the plaintiff who was unknown to the defendant, a Mr. Berry being the surgeon who regularly attended his family. The defendant's wife knew of the plaintiff's attending Parry, and did not express disapprobation of it; the defendant hearing of Parry's illness desired Mr. Berry to see her, and sent her 10*s.* to pay for medicine. There was a further charge in the bill for attendance upon another servant, Ellen Read, who had hurt her ankle in getting over a gate. The plaintiff did not attend her by the desire of the defendant or his wife, and for anything that appeared without their knowledge. It was held that the master, the defendant, was liable in the case of Parry, but not in that of Read. Mr. Justice *Taunton* in his judgment

(*n*) *Sellen* v. *Norman* (1829), 4 C. & P. 80.
(*o*) *Cooper* v. *Phillips* (1831), 4 C. & P. 581.

observed in regard to the case of Parry, "It appears her illness arose whilst in the defendant's service and that the defendant was informed of it, and that he sent Mr. Berry to see her. This shows that he considered himself liable to take care of her in this illness; and it is also shown that his wife knew and did not disapprove of the plaintiff's attendance; and I think it must be taken that the defendant's wife had the general superintendence of this house. It therefore appears to me that for this part of the charge the defendant is liable.

Duty of master to indemnify servant for consequences of obeying lawful orders.—It is the duty of the master to indemnify the servant from the consequences of obeying his lawful orders, and if a servant in carrying out his master's orders do *bonâ fide* what he believes is a lawful act, the master will be bound to indemnify him. Thus an auctioneer having sold cattle for a man who falsely held himself out to be their rightful owner, and, consequently, being obliged to pay their value to the true owner, was held entitled to be reimbursed by the person who had so employed him (*p*). And again, where a brickmaker in ignorance used another's trade mark at the direction of his employer, he was held entitled to recover from his employer the costs to which he had been put in consequence of an action against him by the aggrieved party (*q*).

If a servant act contrary to his master's orders, the master is not bound to indemnify him from any loss he may suffer (*r*). For example, if a servant sells goods with a warranty after being expressly ordered not to warrant them, he is not entitled to be reimbursed by his master for any loss he suffers in consequence. And

(*p*) *Adamson* v. *Jarvis* (1827), 4 Bing. 66.
(*q*) *Dixon* v. *Fawcus* (1861), 30 L. J. Q. B. 137; *Toplis* v. *Grane* (1839), 5 Bing. N. C. 636.
(*r*) *Grylls* v. *Davis* (1831), 2 B. & Ad. 516.

if the servant commit a tortious act knowingly, as, for example, an assault at the request of his master, he can claim no indemnity from his master for the consequences thereby falling on him.

Master cannot recover from servant for an illegal act.—If a master suffer through the illegal act of his servant he cannot recover the damages he suffers from the servant. The proprietor of a newspaper, for example, convicted and fined for the publication of a libel in his paper, inserted without his knowledge or consent by the editor, cannot recover against the editor the damages sustained by such conviction (*s*). In this case Lord *Lyndhurst* remarked "I may say I entertain little doubt that a person who is declared by the law to be guilty of a crime cannot be allowed to recover damages against another who has participated in its commission."

(*s*) *Colbourn* v. *Patmore* (1834), 1 C. M. & R. 73; *Cf. R.* v. *Walter* (1799), 3 Esp. 21. But see the remarks of Lord HERSCHELL, C., in *Palmer* v. *Wick Steamship Co.*, [1894] A. C. 318.

CHAPTER VI.

The Rights of the Master as against Third Parties.

Maintenance.—As one of the incidents to the relation of master and servant the law looks upon the former to some extent as a protector or patron, and therefore sanctions the master's maintaining, that is assisting his servant in any action at law against a stranger; although in general it is an offence against public justice to encourage suits and animosities by helping to bear the expenses of them and is in law called *maintenance* (*t*). But it is said that the master in real actions cannot justify laying out money for his servant unless he has some of his wages in his hands: which if the servant be willing he may safely lay out on his behalf (*u*).

Enticing away servant.—Since by the contract of hiring the master is entitled to the full benefit of the services impliedly promised to be rendered by the servant, any act whereby the servant is enticed away, prevented, or seduced from rendering those services, either wholly or partially, is a wrong against the master. For such an act (unless it happen by unavoidable accident or misfortune) the law gives the master a remedy against the wrongdoer by an action to recover damages for the loss occasioned by reason of his being deprived of the services of his servant, technically expressed by the phrase, *per quod servitium amisit*. Thus where an opera singer having contracted to sing at a particular theatre during a certain period was

(*t*) *Elborough* v. *Ayres* (1870), L. R. 10 Eq. 367; Russell on Crimes, i. 480; *Bread* v. *The Royal British Nurses Association* (C. A.) W. N. (1897), 63; Blackstone, i. 428.

(*u*) Hawkins P. C. 400.

enticed and procured by another theatre proprietor to depart from her agreed employment during the term, it was held by the court (*Coleridge*, J., *diss.*) that an action was maintainable at common law, as maliciously procuring the singer to break her contract was a wrongful act from which damage accrued to the plaintiff; and that the action for maliciously persuading a servant to quit his service is maintainable wherever there is at the time of the persuading a binding contract of hiring and service existing between the parties, whether the service be then actually subsisting or not (*x*).

If a person not having enticed or procured a servant to leave his master, or at the time be ignorant that he was in the service of another, employ such a servant after receiving notice of the existence of the other engagement, he will render himself liable to an action for damages at the suit of the master (*y*). It has been further held that in order to maintain such an action it is not necessary for the employer and employed to be in the strict relation of master and servant (*z*).

When action for enticing away does not lie.—No action lies, however, for seducing a servant from his master if the master has already recovered from the servant the penalty which by agreement between them should be paid by either of them on his failing to carry out his part of the contract (*a*).

Again it is not actionable to induce a servant to leave his master's service at the expiration of the time for which the servant had hired himself, although the servant had no intention at the time of quitting his master's service (*b*).

(*x*) *Lumley* v. *Gye* (1853), 22 L. J. Q. B. 463.

(*y*) *Blake* v. *Lanyon* (1795), 6 T. R. 221; *De Francesco* v. *Barnum* (1890), 63 L. T. 514; 6 L. T. R. 486.

(*z*) *De Francesco* v. *Barnum*, *ubi supra*; *Evans* v. *Walton* (1867), L. R. 2 C. P. 615; *Brown* v. *Hall* (1881), 6 Q. B. D. 333.

(*a*) *Bird* v. *Randall* (1762), 3 Burr. 1345; 1 W. Bl. 372.

(*b*) *Nichol* v. *Martyn* (1799), 2 Esp. 732. See Lord KENYON's judgment.

Master may defend his servant from assault.—A master may defend his servant from being beaten, or in other words an assault is justifiable by a master in defence of his servant (*c*), although there is an early dictum to the contrary (*d*). And the master may recover damages from the wrongdoer, and this although the servant may have recovered damages for the same assault, for the servant is thus compensated for personal injury, whereas the master is remunerated for the loss of the services of his servant (*e*). There is, however, this anomaly that if the servant dies as the result of the injuries inflicted the master cannot recover. Apart from Lord Campbell's Act (*f*), no civil action is maintainable against a person who has by negligence caused the death of another (*g*).

A servant may in like manner lawfully assault a third person in defence of his master (*h*).

Upon the same principle of being deprived of his servant's services a master may maintain an action for debauching his female servant, though he is in no way related to her by blood (*i*).

Action for seduction.—The action brought by a parent for the seduction of his daughter is based on the fiction that the relationship of master and servant exists between them, and that in consequence he is entitled to compensation for the loss of his daughter's services. Evidence of the most trifling services by the daughter, as, for example, making the tea (*k*), or doing some little household work on returning home at night

(*c*) *Tickell* v. *Read* (1773), Lofft. 215. Lord MANSFIELD and note of the learned reporter.
(*d*) Salk. 407.
(*e*) *Ditcham* v. *Bond* (1884), 2 M. & S. 436; *Hall* v. *Hollander* (1825), 4 B. & C. 660; *Hodsall* v. *Stallybrass* (1840), 11 B. & E. 301; and see the remarks of TINDAL, C.J., in *Grinnell* v. *Wells* (1844), 7 M. & G. 1042.
(*f*) 9 & 10 Vict. c. 93.
(*g*) *Osborn* v. *Gillett* (1873), 42 L. J. Ex. 53 (BRAMWELL, B., diss.)
(*h*) *Leeward* v. *Basilee* (1695), 1 Salk. 406.
(*i*) *Fores* v. *Wilson* (1791), 1 Peake, 55.
(*k*) *Carr* v. *Clarke* (1818), 2 Chit. Rep. 260.

after serving elsewhere all day (*l*), have been held sufficient ground for bringing an action. Some of the cases go even further, and the tendency is to infer from the mere fact of the daughter residing with the father that she is there for the purpose of service. In *Evans* v. *Walton* (*m*), *Bovill*, C.J., observed: "In the case of an action for seduction of a daughter, no proof of service is necessary beyond the service implied from the daughter living in her father's house as a member of his family." And in another case (*n*) the court held that a girl not actually resident in her father's house, but on her way home after leaving a situation was sufficiently in her father's service to support an action. "The girl," said the court, "is under twenty-one, and is therefore *primâ facie* under the dominion of her natural guardian, and as soon as a girl ceases to be under the control of a real master, and intends to return to her father's house, he has a right to her services, and therefore there was a constructive service in the present case." If the seduction is not followed by pregnancy and illness by which loss of service might be presumed an action will not lie (*o*). The daughter need not be under age (*p*). And the seduction of a married daughter separated from her husband and living with her father and rendering him service is good ground for an action by the father (*q*). Absence of knowledge on the part of the seducer that the girl was the plaintiff's servant does not affect his liability. The plaintiff need not prove that the defendant knew the servant was in his service (*r*).

(*l*) *Rist* v. *Faux* (1863), 32 L. J. Q. B. 386.

(*m*) *Evans* v. *Walton* (1867), L. R. 2 C. P. 615; 36 L. J. C. P. 307.

(*n*) *Terry* v. *Hutchinson* (1868), L. R. 3 Q. B. 599; 37 L. J. Q. B. 257; see also *Maunder* v. *Venn* (1829), M. & M. 323: *Jones* v. *Brown* (1724), 1 Esp. 217.

(*o*) *Ingerson* v. *Miller* (1866), 47 Barb. 47 (Am. Cas.)

(*p*) *Bennett* v. *Alcott* (1787), 2 T. R. 166.

(*q*) *Harper* v. *Luffkin* (1827), 7 B. & C. 387.

(*r*) *Fores* v. *Wilson* (1791), 1 Peake, 77. See Lord KENYON'S judgment

In awarding *damages* of this nature the chief consideration placed before the jury is the injured feelings of the plaintiff, and it is for this that the compensation is given, and not unfrequently to a liberal extent. "In point of form," said Lord *Eldon*, "the action only purports to give a recompense for loss of service; but we cannot shut our eyes to the fact that this is an action brought by a parent for an injury to her child; in such cases I am of opinion that the jury may take into their consideration all that she can feel from the nature of the loss. They may look upon her as a parent losing the comfort as well as the service of her daughter" (*s*). An action may be brought not merely by the parents, but also by any one in the relation of master (*t*), by a brother (*u*), an aunt (*x*), or an adoptive father (*y*). The plaintiff may show the position in life (*z*) of the defendant, but not his pecuniary condition (*a*).

The plaintiff cannot give evidence of his daughter's good character till the other side try to shake it (*b*). But in mitigation of damages, evidence of the girl's immodest character may be given (*c*); or that by keeping loose company she is the author of her own wrong (*d*).

In bringing an action for seduction it is still necessary to allege the loss of service, to make an allegation *per quod servitium amisit.*

(*s*) *Bedford* v. *M'Kowl* (1800), 3 Esp. 119. See also *Grinnell* v. *Wells* (1844), 7 M. & G. 1033; *Andrews* v. *Askey* (1837), 8 C. & P. 7.
(*t*) *Fores* v. *Wilson* (1791), 1 Peake, 77.
(*u*) *Howard* v. *Crowther* (1841), 8 M. & W. 601.
(*x*) *Edmondson* v. *Machell* (1787), 2 T. R. 4.
(*y*) *Irwin* v. *Dearman* (1809), 11 East, 23.
(*z*) *Andrews* v. *Askey* (1837), 8 C. & P. 7.
(*a*) *Hodsoll* v. *Taylor* (1874), 43 L. J. Q. B. 14.
(*b*) *Bamfield* v. *Massey* (1808), 1 Camp. 460.
(*c*) *Verrey* v. *Watkins* (1836), 7 C. & P. 308.
(*d*) *Reddie* v. *Scott* (1795), 1 Peake, 316.

CHAPTER VII.

Liability of the Master for Injury to his Servant.

The common law principle.—By the common law the relationship of master and servant does not impose on the master a liability to compensate his servant for injury which may happen to him in the ordinary course of his employment. This principle was distinctly laid down in the case of *Priestley* v. *Fowler* (*e*), where a servant, when engaged in taking goods to his master's customers in an overloaded van, was thrown out and his thigh broken through the van breaking down. It was held that an action did not lie against the master to compensate the servant for this injury. Lord *Abinger*, C.B., in his judgment, said, "It is admitted there is no precedent for the present action by a servant against a master. We are therefore to decide the question on general principles, and in doing so we are at liberty to look at the consequences one way or the other. . . . . The mere relation of master and servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is no doubt bound to provide for the safety of his servant in the course of his employment to the best of his judgment, information and belief. The servant is not bound to risk his safety in the service of his master, and may, if he think fit, decline any service in which he reasonably apprehends injury to himself: and in most of the cases in which danger may be incurred, if not in all, he is

(*e*) *Priestley* v. *Fowler* (1837), 3 M. & W. 1.

just as likely to be acquainted with the probability and extent of it as the master."

The simple common law principle, that a master is not liable for injury to his servant in the course of his service, has been often obscured, owing to the numerous cases in which actions have been brought against the master by a servant who has been injured through the act of another servant of the same master employed on the same work, or in "common employment," as the phrase is. The case of *Priestley* v. *Fowler* is constantly cited in illustration of this doctrine of common employment, though it is uncertain how far that question was really raised before the court which decided it. The law was clearly stated by Lord Chancellor *Cairns* in the case of *Wilson* v. *Merry* (*f*), when he observed, "The liability or non-liability of a master to his workmen cannot depend upon the question whether the author of the accident is or is not, in any technical sense, the fellow-workman or collaborateur of the sufferer. The case of the fellow-workman is an example of the rule, not the rule itself; the rule stands on broader grounds. The master is not, and cannot be, liable to his servant unless there be negligence on the part of the master in that which he, the master, has contracted or undertaken with his servant to do."

A master is bound to take all reasonable precautions to secure the safety of his servants (*g*).

Master liable if negligent.—A master therefore becomes liable to his servant for injury if due to the master's negligence. Such negligence may be shown in several ways, as by—

1. Not supplying sound and suitable tackle.—It is

(*f*) *Wilson* v. *Merry* (1868), L. R. 1 Sc. Ap. 326.
(*g*) *Brydon* v. *Stewart* (1885), 2 Macq. 30.

incumbent on the master to take care that the tackle, machinery or premises supplied are suitable and sufficiently strong for the work in which they are used. Examples of such liability are a miner being injured by a stone falling from the roof of the pit in which he was working owing to its not being safely secured (*h*); or a miner being injured on ascending a shaft which was unsafe (*i*); providing an unsafe ladder (*k*); a shipowner supplying a stevedore with an unsound chain (*l*); injury caused by the falling of a defective door (*m*). In the last case, however, the servant failed to fix liability on the master because the statement of claim did not allege that the servant was ignorant of the danger. The court held that there was no right of action unless the statement of claim alleged both that the master knew and the servant was ignorant of the danger. It must not be inferred from the preceding that the master is under any obligation not to expose the servant to extraordinary danger and risk in the course of his employment: the relation of master and servant implies no such undertaking on the part of the master (*n*).

2. Carelessness in selecting his servants, and so provide himself with incompetent ones (*o*), or an insufficient number for the work in hand. But the servant must be ignorant of this incompetency or insufficiency, or at least, if aware of it, have called

(*h*) *Patterson* v. *Wallace* (1854), 1 Macq. 748.
(*i*) *Brydon* v. *Stewart* (1855), 2 Macq. 30.
(*k*) *Williams* v. *Clough* (1858), 27 L. J. Ex. 825.
(*l*) *Murphy* v. *Phillips* (1876), 35 L. T. 477.
(*m*) *Griffiths* v. *London and St. Katherine's Dock Co.* (1884), 19 Q. B. D. 259. See also *Dynen* v. *Leach* (1857), 26 L. J. Ex. 221; *Davies* v. *England* (1864), 38 L. J. Q. B. 321.
(*n*) *Riley* v. *Baxendale* (1861), 30 L. J. Ex. 87; *Seymour* v. *Maddicks* (1851), 20 L. J. Q. B. 326.
(*o*) *Hutchinson* v. *Y. N. & B. Rail. Co.* (1850), 19 L. J. Ex. 296; *Wigmore* v. *Jay* (1850), 19 L. J. Ex. 300; *Tarrant* v. *Webb* (1856), 25 L. J. C. P. 261.

the attention of his master to the fact, or he will be unable to recover (*p*).

It must not be inferred from the above that a master by implication can be held to warrant to one servant the competency of other servants working with him. The only obligation upon him is to use proper diligence and care in securing competent servants (*q*).

3. Personally interferes or actually works with his servant.—If the master personally interferes with or directs the work he will be liable for injury occurring to his servants through his negligence. For instance, a builder who personally interfered and directed his workmen to make a scaffolding out of poles which he knew to be unsound was held liable to make compensation to a workman who was injured by the scaffolding giving way and falling upon him, the said workman having had no notice of the unsoundness (*r*).

If the master actually works with his servant he will be liable for injury occurring to the servant through his (the master's) negligence. And if such a master be one of a partnership, and if his act of negligence occurs in a matter within the scope of the common undertaking of the partnership, all the partners will be liable for the injury caused to the servant (*s*).

When a master is not liable.—A master is not liable for injury to his servant if there is—

1. Contributory negligence on the servant's part.—If, for instance, a servant continue to use tackle which he knows to be unsafe he will be unable to recover from

(*p*) *Skipp* v. *Eastern Counties Rail. Co.* (1854), 23 L. J. Ex. 23; 9 Ex. 223; *Saxton* v. *Hawkesworth* (1872), 26 L. T. 851.

(*q*) *Tarrant* v. *Webb* (1856), 25 L. J. C. P. 261.

(*r*) *Roberts* v. *Smith* (1857), 26 L. J. Ex. 319; *Ormond* v. *Holland* (1858), E. B. & E. 102.

(*s*) *Ashworth* v. *Stanwick* (1861), 30 L. J. Q. B. 182; 4 L. T. 85; *Mellors* v. *Shaw* (1861), 30 L. J. Q. B. 333.

his master for any injury arising therefrom. The maxim *Volenti non fit injuria* applies. This is illustrated by the case of *Griffiths* v. *Gidlow* (*t*), in which a workman knowingly used an unsafe hook for raising water from a pit; the hook broke, and in consequence a tub of water fell and injured him. In another case (*u*) a workman was injured whilst employed in a dark narrow tunnel; he was unable to recover, for it was held that he had engaged in the work well knowing the risks which must necessarily attend it. And again where a miner was killed through the breaking of a rope, he having negligently refused to accept the offer to have it tested before use (*x*).

The principle of *Volenti non fit injuria* equally applies if the master is aware of the defect causing the injury (*y*). If, however, the master's attention has been called to the defect, and under a promise that it shall be rectified the servant continues the dangerous employment and is injured, he will then have a right of action against his master (*z*). But in the light of a recent case the inference may be drawn that the mere continuance of a servant in an employment which he knows renders him liable to injury is not necessarily conclusive against his right of action if he is injured in the course of such employment. In this case (*a*) the House of Lords decided that when a workman engaged in an employment not in itself dangerous is exposed to danger arising from an operation in another department

(*t*) *Griffiths* v. *Gidlow* (1858), 27 L. J. Ex. 405; 3 H. & N. 648.

(*u*) *Woolley* v. *Metrop. Rail. Co.* (1877), 46 L. J. Ex. 521.

(*x*) *Senior* v. *Ward* (1859), 28 L. J. Q. B. 139; 1 E. & E. 385. See also *Alsop* v. *Yates* (1858), 27 L. J. Ex. 156.

(*y*) *Dynen* v. *Leach* (1857), 26 L. J. Ex. 221; *Potts* v. *Plunkett* (1859), 33 L. T. 111; *Thomas* v. *Quartermaine* (1887), 18 Q. B. D. 685; *Yarmouth* v. *France* (1887), 19 Q. B. D. 647.

(*z*) *Holmes* v. *Clarke* (1862), 31 L. J. Ex. 356; 9 L. T. 178.

(*a*) *Smith* v. *Baker* (1891), App. Cases, 325. See also *Johnson* v. *Lindsay* (1891), App. Cases, 371.

over which he has no control, the danger being created or enhanced by the negligence of the employer, the mere fact that he undertakes or continues in such employment, with full knowledge and understanding of the danger, is not conclusive to show that he has undertaken the risk so as to make the maxim *Volenti non fit injuria* applicable in case of injury. The question whether he has so undertaken the risk is one of fact, and not of law. And this is so both at common law and in cases arising under the Employers' Liability Act, 1880 (*b*).

And in another case (*c*) it was held that the maxim *Volenti non fit injuria* did not apply to a servant compelled by the orders of his employer to work in a place which he knew might be dangerous owing to other work being carried out by another party, and that he was entitled to recover from this party.

If the employment in which the servant is engaged is subject to statutory regulations, under, for example, the Factory and Workshop Acts (*d*) or the Coal and Metalliferous Mines Regulation Acts (*e*), and injury happens to the servant owing to breach of such regulations on the part of such employer (there being no contributory negligence on the part of the servant), the employer will not be exempt from liability, although the servant knew of the breach (*f*).

The master will also be liable if he employ an inexperienced child to manage dangerous machinery, although the danger would be evident to an adult (*g*).

(*b*) 43 & 44 Vict. c. 42.

(*c*) *Thrussell* v. *Handyside* (1888), 20 Q. B. D. 359.

(*d*) 41 & 42 Vict. c. 16 (1878); 46 & 47 Vict. c. 53 (1883); 54 & 55 Vict. c. 75 (1891).

(*e*) 50 & 51 Vict. c. 58 (1887); 35 & 36 Vict. c. 77 (1872).

(*f*) *Britton* v. *Great Western Cotton Co.* (1872), L. R. 7 Ex. 130; *Senior* v. *Ward* (1859), 28 L. J. Q. B. 132.

(*g*) *Grizzle* v. *Frost* (1863), 3 F. & F. 623; though see *contra Murphy* v. *Smith* (1865), 12 L. T. (N.S.) 605; also *Lynch* v. *Nurdin* (1841), 1 Q. B. 29.

2. The injury is caused by a fellow-servant in common employment.—This has been the law ever since the case of *Priestley* v. *Fowler* (*h*) was decided in 1837, where from the judgment of Lord *Abinger*, C.B., it has been assumed that the accident which occurred to the servant who was thrown from the van which broke down was attributed to another servant who was driving it. The Chief Baron, in the course of his judgment, said, "If the master is liable to the servant in this action, the principle of that liability will be found to carry us to an alarming extent. He who is responsible by his general duty, or by the terms of his contract, for all the consequences of negligence in a matter in which he is the principal, is responsible for the negligence of all his inferior agents. If the owner of the carriage is therefore responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his coachmaker, or his harness-maker, or his coachman. The footman, therefore, who rides behind the carriage may have an action against his master for a defect in the carriage owing to the negligence of the coachmaker, or for a defect in the harness arising from the negligence of the harness-maker, or for drunkenness, neglect or want of skill in the coachman: nor is there any reason why the principle should not, if applicable in this class of cases, extend to many others. The master, for example, would be liable to the servant for the negligence of the chambermaid, for putting him into a damp bed; for that of the upholsterer for sending in a crazy bedstead, whereby he was made to fall down while asleep and injure himself; for the negligence of the cook in not properly cleaning the copper vessels used in the kitchen; of the butcher, in supplying the family with meat of a quality injurious to health;

(*h*) *Priestley* v. *Fowler* (1837), 3 M. & W. 1.

of the builder, for a defect in the foundations of the house, whereby it fell and injured both the master and the servant in the ruins. The inconvenience—not to say the absurdity—of these consequences afford a sufficient argument against the application of this principle to the present case." It may be doubted whether some of the analogies used by the learned judge are true ones, and fairly illustrate the liability the servant tried to fix on his master for the accident which gave rise to *Priestley* v. *Fowler*. This judgment of Lord *Abinger* is, however, of very great importance, for it no doubt largely guided subsequent decisions, and made *Priestley* v. *Fowler* the leading case on the subject. It was followed in 1850 in *Hutchinson* v. *The York, Newcastle and Berwick Rail. Co.* (*i*), where the railway company was held not liable for the injury occasioned to one of their own servants by a collision while he was travelling in one of their carriages in discharge of his duty as their servant, the train causing the collision being in charge of other servants of the company. The injury was so caused that the company would undoubtedly have been liable if the party injured had been a stranger travelling as a passenger for hire. The reasons for this decision appear from the judgment of the court delivered by *Alderson*, B., who, in the course of it, observed that, "The principle is that a servant when he engages to serve a master undertakes as between himself and his master, to run all the ordinary risks of the service, and this includes the risk of negligence upon the part of a fellow-servant when he is acting in the discharge of his duty as servant of him who is the common servant of both. . . . . The master is not exempt from responsibility to his servant for an injury occasioned to him by the act of another

(*i*) *Hutchinson* v. *York, N. and B. Rail. Co.* (1850), 5 Ex. 343; 19 L. J. Ex. 296. See also *Wigmore* v. *Jay* (1850), 19 L. J. Ex. 300.

servant when the servant injured was not at the time of the injury acting in the service of his master. In such a case the servant injured is substantially a stranger, and entitled to all the privileges which he would have had if he had not been a servant."

The same principle has been held to apply to servants of different masters when those masters are employed for a common purpose by another, as sub-contractors by a head contractor. All such servants are in the common employment of the head contractor (*k*). In a recent case (*l*) the defendants lent a crane and the man in charge of it to a firm engaged in loading a ship. Through the negligence of this man injury resulted to one of the servants of the loaders who was employed to direct the working of the crane. It was held that the defendants were not liable, for they had parted with the power of controlling their servant in regard to the matter in which he was engaged.

The law with regard to common employment was plainly put by Lord *Cranworth*, C., in the important case of *Bartonshill Coal Co.* v. *Reid* (*m*). This case is all the more important from its being a Scotch appeal to the House of Lords, for the Scotch courts had not previously taken the same view of the law on this subject as that laid down in *Priestley* v. *Fowler* and subsequently followed in England. That this case received most careful and anxious consideration from the law lords may be inferred from the fact that judgment was not delivered until two years after the case was argued before them. The Lord Chancellor, in the course of his judgment, said, "Servants must be supposed to have the risks of the service in contemplation when they voluntarily undertake it and agree to accept the stipulated remuneration. If, therefore, one

(*k*) *Wigget* v. *Fox* (1856), 11 Ex. 832; 25 L. J. Ex. 188.
(*l*) *Donoran* v. *Laing, Wharton, &c., Const. Synd.*, [1893] 1 Q. B. 629.
(*m*) *Bartonshill Coal Co.* v. *Reid* (1858), 3 Macq. 266.

of them suffers from the wrongful act or carelessness of another the master will not be responsible. This, however, supposes that the master has secured proper servants and proper machinery for the conduct of the work. To constitute fellow-labourers within the meaning of the doctrine which protects the master from responsibility for injuries sustained by one servant through the wrongful act or carelessness of another, it is not necessary that the servant causing and the servant sustaining the injury shall both be engaged in precisely the same, or even similar acts. Thus the driver and guard of a stage coach, the steersman and rowers of a boat, the man who draws the red-hot iron from the forge and those who hammer it into shape, the engine-man and the switcher, the man who lets the miners down into and who afterwards bring them up from the mine and the miners themselves; all these are fellow-labourers or collaborateurs within the meaning of the doctrine in question."

In another case (*n*) against the same company, also carried to the House of Lords, Lord *Chelmsford*, C., in delivering their lordships' judgment, observed: "It is necessary to ascertain whether the servants are fellow-labourers in the same common work, because, although a servant may be taken to have engaged to encounter all risks which are incident to the service which he undertakes, he cannot be expected to anticipate those which may happen to him on occasions foreign to his employment. When, therefore, servants are engaged in different departments of duty, an injury committed by one servant on another by carelessness or negligence in the course of his peculiar work is not within the exception, and the master's liability attaches in that case in the same manner as if the injured servant stood in no such relation to him." There are numerous cases

(*n*) *Bartonshill Coal Co.* v. *McGuire* (1858), 3 Macq. 307.

which illustrate the last point referred to in this judgment. Where, for example, a workman in the employ of one railway company working on a siding which was in the joint occupation of this and another company was killed by an engine of that other company running on to the siding (through a defect in the rails), it was held that his representative could recover under Lord Campbell's Act (*o*) from the other company (*p*). A railway company has also been held liable for injury to a porter of another company occasioned by one of their own servants, both being employed at a railway station jointly used by the two companies (*q*). And again, the representatives of a signalman employed by one railway company who was killed through the act of an engine-driver of another company at a joint station of the two companies recovered against the company employing the said engine-driver (*r*). And more recently, in the important case of *Johnson* v. *Lindsay* (*s*), certain builders contracted with a landowner to build certain houses, the contract providing that the defendants, a firm of iron founders (selected by the landowner's architect), should lay a fire-proof roofing on the houses, for which the builders were to pay 213*l.*, and were also to provide scaffolding and other assistance. The defendants employed their own workmen. In the course of the work the plaintiff, one of the builders' workmen, was injured by the negligence of one of the defendant's workmen. The Court of Appeal (*Fry*, L.J., *diss.*) held that the workmen were in common employment of the builders, and therefore the plaintiff could not recover. The House of Lords reversed the decision of the Court

(*o*) 9 & 10 Vict. c. 93.

(*p*) *Vose* v. *Lancashire Rail. Co.* (1858), 27 L. J. Ex. 249; 4 Jur. (N.S.) 364.

(*q*) *Warburton* v. *Great Western Rail. Co.* (1867), 36 L. J. Ex. 9; 15 L. T. 361.

(*r*) *Swainson* v. *North-Eastern Rail. Co.* (1878), 47 L. J. Q. B. 372.

(*s*) *Johnson* v. *Lindsay*, [1891] App. Cas. 371.

of Appeal, holding that since the relation of master and servant did not exist between the respondents and the appellant, the doctrine of collaborateur did not apply, and the action was maintainable. The bearing of the case of *Wiggett* v. *Fox* (referred to above, p. 74) and how distinguishable was explained by Lord *Herschell* in his judgment. The case of *Johnson* v. *Lindsay* has been followed or approved on several occasions since (*t*).

If two vessels belonging to the same owner and same line, frequenting the same river and port, come into collision, the master and crew of one vessel are not in common employment with the master and crew of the other (*u*).

Upper and lower servants of the same master are in common employment. A miner and the general manager of the mine have been held to be fellow-servants, and that even where the latter has been guilty of the negligence causing the injury before the former entered the service of the common master (*x*). The chief and third engineers on board the same steamer are fellow-servants (*y*), as also a builder's labourer and his foreman (*z*). If, however, the superior servant has been placed in a position of trust and authority, and the lower servant directed to obey him, the master will be liable (*a*).

Volunteers.—If a person voluntarily assists a servant, and whilst so doing is injured by the unauthorized negligent act of another competent servant of the same master, he will place himself in the same position as a servant, and will be unable to recover from the

(*t*) *Cameron* v. *Nystrom*, [1893] App. Cas. 308; *McCallum* v. *North British Rail. Co.* (1893), 20 Ct. of Sess. Cas. 385 (Sc.); *Hedley* v. *Pinkney & Sons*, [1894] App. Cas. 222.

(*u*) *The Petrel* (1893), 62 L. J. C. P. 92; P. 230.

(*x*) *Wilson* v. *Merry* (1868), L. R. 1 Sc. Ap. 326.

(*y*) *Searle* v. *Lindsay* (1862), 31 L. J. C. P. 106.

(*z*) *Gallagher* v. *Piper* (1864), 33 L. J. C. P. 329.

(*a*) *O'Byrne* v. *Burn* (1854), 16 Sec. Ser. (Sc. Rep.) 1025. See also *Murphy* v. *Smith* (1865), 12 L. T. 605; 19 C. B. (N.S.) 361; *Feltham* v. *England* (1866), L. R. 2 Q. B. 33.

master (*b*). In other words, a stranger by volunteering his assistance cannot impose upon the master a greater liability than his own servant (*c*). But where a consignor or consignee of goods to a railway company assists the stationmaster in sending off or in receiving such goods they are not mere volunteers or licensees, and are entitled to compensation from the company for injury occurring to them when engaged on such work (*d*). A bare licensee would have no such claim (*e*).

Employers' Liability Act, 1880.—The decisions on the subject of common employment, to which attention has been directed, caused much criticism and discontent from the workmen's point of view. Although theoretically it might be said, as indeed it was said by eminent judges upon the bench, that the servant need not engage in the work unless he liked, and must be taken to know very well the risks attending the occupation upon which he engaged, yet in actual practice the servant often had really no choice, and certainly had little or no voice in the selection of, and no control over his fellow-workmen, by the negligence of whom he might suffer injury (*f*). As a result the *Employers' Liability Act* (*g*) was passed in the year 1880. This statute enacts that the workman, or, in case of death, his representatives, shall have the same rights of compensation as a stranger in five specified cases, which include any negligence on the part of any one acting directly on behalf of the master, and railway signalmen and engine-drivers (*h*). This Act does not, therefore, finally dispose of the subject of common employment.

(*b*) *Degg* v. *Midland Rail. Co.* (1857), 26 L. J. Ex. 171.
(*c*) *Potter* v. *Faulkner* (1862), 31 L. J. Q. B. 30.
(*d*) *Holmes* v. *North-Eastern Rail. Co.* (1871), 40 L. J. Ex. 121; *Wright* v. *London and North-Western Rail. Co.* (1875), 1 Q. B. D. 252.
(*e*) *Batchelor* v. *Fortescue* (1883), 11 Q. B. D. 474.
(*f*) *Vide* Report of Select Committee of House of Commons (1877) on Employers' Liability.
(*g*) 43 & 44 Vict. c. 42.
(*h*) Section 1, sub-ss. (1)—(5).

As regards an ordinary fellow-servant the law remains what it was before the passing of the Act, and the outlines of which have been briefly explained in the preceding pages. Moreover, the workman may contract himself out of the Act (*i*). Section 8 of the Act defines the particular class of servants to whom it applies by saying that "workman" means a railway servant and any person to whom the *Employers and Workmen Act*, 1875 (*k*), applies, *i.e.*, any labourer, servant in industry, journeyman, artificer, handicraftsman, miner, or any one otherwise engaged in manual labour. It will be seen, therefore, that the Act does not include domestic or menial servants, nor clerks; and a number of cases have arisen in which it has been a question in dispute whether persons engaged in certain occupations are included in the Act as being embraced by the description "otherwise engaged in manual labour." It has been held that an omnibus conductor (*l*) is not included in this description; that a grocer's shop assistant (*m*) is not engaged in manual labour. Also, that the guard of a goods train who assisted in coupling and uncoupling trucks is not a workman as defined by the Employers and Workmen Act, 1875, and, therefore, is not a person to whom the Employers' Liability Act applies (*n*).

Workmen's Compensation Act, 1897.—It is anticipated that the Act for compensating workmen injured by accidents just passed through Parliament, although not repealing it, will largely replace the Employers' Liability Act.

The text of this new Act will be found in the Appendix.

(*i*) *Griffith* v. *Earl Dudley* (1882), 51 L. J. Q. B. 543.
(*k*) 38 & 39 Vict. c. 90, s. 10.
(*l*) *Morgan* v. *London General Omnibus Co.* (1884), 13 Q. B. D. 832.
(*m*) *Bound* v. *Lawrence* (1892), 61 L. J. M. C. 21; 56 J. P. 118.
(*n*) *Hunt* v. *Great Northern Rail. Co.* (No. 1), [1891] 1 Q. B. 601; 60 L. J. Q. B. 216.

CHAPTER VIII.

Liability of the Master to Third Parties for the Torts of his Servant.

1. Generally. — That one who acts through the mediation of another is responsible for the latter's acts in relation to third persons is an old and deep-seated principle of law expressed by the maxim adopted from the Roman Law of *Qui facit per alium, facit per se.* But inasmuch as it is impossible in many instances for a stranger to know how far a servant is acting under the orders of his master, and it would be very unjust to make the remedy of a third party dependent upon the interested testimony of the implicated parties, the law has gone further, and laid down what may now be taken to be a *general rule of law*, viz., that a master is responsible for every act of his servant done in the ordinary course of his employment, and this though the servant may be acting contrary to express orders, if the act is one which it might be reasonably presumed the servant as such would have authority to do. This responsibility is not altered if the servant act negligently or injudiciously. Moreover, if the master be absent and the act illegal the master is responsible if the act is within the scope of the servant's authority and done for the master's benefit.

This general rule is illustrated by the following cases:—As far back as 1677 a master was held liable for damage caused by his horses, which were being driven by his servants in Lincoln's Inn Fields (*o*). A servant having made a fire on his master's land, and neglecting

(*o*) *Michael* v. *Alestree* (1677), 2 Levinz. 172.

to take proper precautions, set fire to corn on a neighbour's close, his master was held liable for the damage so caused (*p*). A pawnbroker is liable for a pledge lost by his servant (*q*). An innkeeper is liable for injury to his customer's horse and gig through the carelessness of his ostler (*r*). Where the owner of a boat, which was accustomed to ply for hire and to carry passengers across a haven, employed a servant for that purpose, and the servant on one occasion received a passenger on board, and carried him across the haven near the line of an ancient ferry, and paid the fare over to his master, it was held that the servant was acting at the time in the course of his master's service and for his master's benefit, and that the master was answerable for his act, and would have been liable for such act if it had been distinctly proved to have amounted to an invasion of the ferry (*s*). A coal merchant is liable for injury to a foot passenger due to his carman leaving a coal shoot open (*t*). Where the carriages of a plaintiff and defendant had become entangled, and the defendant's coachman, in order to extricate his master's carriage, whipped the horses in that of the plaintiff and thereby occasioned an injury, the defendant was held liable for the consequences (*u*). The owner of the barge was liable for injury due to the negligent management of two qualified men hired to navigate it, for they were considered to be his servants (*x*).

The servant need not be in the immediate employment of the master to make the latter liable. This was clearly put by *Littledale*, J., in the case of *Laugher* v.

(*p*) *Turberille* v. *Stamp* (1697), 1 Salk. 13.
(*q*) *Jones* v. *Hart* (1698), 2 Salk. 441.
(*r*) *Bather* v. *Day* (1863), 32 L. J. Ex. 171.
(*s*) *Huzzey* v. *Field* (1835), 2 C. M. & R. 432.
(*t*) *Whiteley* v. *Pepper* (1877), 46 L. J. Q. B. 436.
(*u*) *Croft* v. *Alison* (1821), 4 B. & Ad. 590.
(*x*) *Martin* v. *Temperley* (1843), 4 Q. B. 298.

Pointer (*y*), when he pointed out how the owner of a ship is liable for acts of the crew although appointed by the master, the owner of a farm in like manner for the farm labourers hired by his bailiff or hind, or a mine owner (*z*) for the workmen engaged by his steward or manager. This principle was carried to an extreme in the case of *Bush* v. *Steinman* (*a*), which has not since been regarded with favour, or held binding. In that case A., having a house by the roadside, contracted with B. to repair it for a stipulated sum; B. contracted with C. to do the work; and C. with D. to furnish the materials. The servant of D. brought a quantity of lime to the house and placed it in the road, by which the plaintiff's carriage was overturned. It was decided that A. was answerable for the damage sustained.

Liability of contractors.—This naturally leads to the question of how far a person employing a contractor is liable for the acts of the workmen employed by the contractor. As a general principle, persons employing a contractor are not responsible for the acts of his servants. "I apprehend it to be a clear rule," said *Willis*, J., in *Murray* v. *Currie* (*b*), "in ascertaining who is liable for the act of a wrong doer, that you must look to the wrong doer himself, or to the first person in the ascending line who is the employer and has the control of the work. You cannot go further back and make the employer of that person liable."

The test of a person's liability for the acts of the servants of a contractor he employs is, therefore, whether he has parted with the whole control of the work. For example, the buyer of a bullock employed a licensed drover to drive it from Smithfield, and by the

(*y*) *Laugher* v. *Pointer* (1826), 5 B. & C. 554.
(*z*) *Stone* v. *Cartwright* (1795), 6 T. R. 411.
(*a*) *Bush* v. *Steinman* (1799), 1 B. & P. 404.
(*b*) *Murray* v. *Currie* (1871), 40 L. J. C. P. 26.

bye-laws a licence was necessary for such employment. The drover employed a boy to drive the bullock together with others, the property of different persons. Through the careless driving of the boy damage was caused by the bullock. The buyer of the bullock was not liable, for the drover was here following an independent employment, and was not the servant of the person who engaged him (*c*). A builder was not liable for injury due to an explosion of gas arising from the carelessness of a gas fitter with whom he had made a sub-contract to put up certain gas fittings (*d*). Again, a railway company agreed with a firm of contractors to build part of their line. Through the carelessness of one of the contractor's workmen a stone fell on a person passing under a bridge and killed him. Notwithstanding that by the terms of the agreement the company was to have a general right of superintending the progress of the work, and if the contractors employed incompetent workmen the power to dismiss them, the court was of opinion that the workmen were not thereby made the servants of the company, and the company was, therefore, not responsible for the injury (*e*).

When contractors not liable. — Under exceptional circumstances however, the person employing the contractor may be liable, *e.g.*:

(a.) *If the contractor is employed to do an unlawful act.* This is illustrated by a case in which a registered joint-stock company contracted with a contractor, W., for the laying of their main gas pipes in the streets of Sheffield, though having no special power for that purpose. The servants of W. left a heap of earth and

(*c*) *Milligan* v. *Wedge* (1840), 12 A. & E. 737; 1 Q. B. 714.
(*d*) *Rapson* v. *Cubitt* (1842), 9 M. & W. 760.
(*e*) *Reedie* v. *London and North-Western Rail. Co.* (1849), 20 L. J. Ex. 65; 4 Ex. 244; see also *Overton* v. *Freeman* (1852), 21 L. J. C. P. 52; 16 Jur. 65; *Foreman* v. *Mayor of Canterbury* (1871), 40 L. J. Q. B. 138.

stones which had been thrown out of the trenches dug for receiving the pipes in one of the streets. The plaintiff, who in passing along, tumbled over it and was injured, brought an action against the company and was successful (*f*).

(b.) *If the work to be executed is such that in the natural course of things injurious consequences must be expected to arise*, unless means are adopted by which such consequences may be prevented, and the employer does not take precautions to prevent the mischief (*g*).

(c.) *If the employer is under an obligation either by statute, or by common law to do a thing efficiently.* So that where a railway company being empowered by an Act of Parliament to construct a bridge over a navigable river, but with the proviso that it should be opened within a certain time for the passage of vessels, and the contractors so constructed the bridge that it would not open, the railway company was held liable (*h*).

(d.) *If the employer personally interferes with the work.* The owner of some newly built houses employed to make a drain a contractor who left on the road a heap of gravel which caused injury to a person driving by. Previously, on complaint being made, the owner had promised to remove the gravel, and had instructed a man to do so, and he was therefore held liable because it was not clear that the contractor had undertaken to remove the gravel, and he (the owner) had busied himself about it (*i*).

2. Liability when servant not immediate cause of injury.—The master may be liable when the immediate

(*f*) *Ellis* v. *Sheffield Gas Co.* (1854), 53 L. J. Q. B. 45.

(*g*) *Bower* v. *Peate* (1876), 45 L. J. Q. B. 446; 1 Q. B. D. 321; see also *Pickard* v. *Smith* (1861), 4 L. T. (N.S.) 470; *Tarry* v. *Ashton* (1876), 1 Q. B. D. 314.

(*h*) *Hole* v. *Sittingbourne Rail. Co.* (1861), 30 L. J. Ex. 81; see also *Gray* v. *Pullen* (1865), 34 L. J. Q. B. 265.

(*i*) *Burgess* v. *Gray* (1845), 64 L. J. C. P. 184; 6 C. B. 378.

cause of the injury is not the act of the servant, but that of a third person, made possible by the negligence of the servant. The case of *Illidge* v. *Goodwin* (*k*), is a good illustration of this. Here a master scavenger was held liable for damages done by his horse and cart, due to a passer-by havin truck the horse whilst his servant had left it unattended. And in a very recent case (*l*) it was laid down that there is no rule of law to prevent a master being liable for the negligence of his servant, whereby opportunity was given for a third person to commit a wrongful or negligent act immediately producing the damage complained of. Whether the original negligence was an effective cause of the damage is a question of fact in each case, In this particular case the defendant employed a man to drive a cart, with instructions not to leave it, and a lad, who had nothing to do with the driving, to go in the cart and deliver parcels to the customers. The driver left the cart, leaving the boy in charge of it, to go into a house. While the driver was absent the lad drove on and came into collision with the plaintiff's carriage. The defendant was held liable on the ground that the effective cause of the damage was the negligence of the driver in leaving the cart in the way he did.

3. Liability when servant acts contrary to orders.—A master may be liable for the acts of his servant though they are not necessary for the proper performance of his work, or are even contrary to the express orders of his master. Two carriages became entangled and the coachman of one of them whipped the horses in the other in order to extricate his master's carriage, and thereby caused injury. His master was held

(*k*) *Illidge* v. *Goodwin* (1831), 1 C. & P. 190.

(*l*) *Engelhart* v. *Farrant and others*, [1897] 1 Q. B. 240 ; but see *Mann* v. *Ward* (1892), 8 T. L. R. 699 ; where a cab owner was held not liable for injuries caused by his cab being driven by some one, not his servant, when the latter was inside the cab drunk.

liable (*m*). An omnibus company is responsible for injuries arising from their drivers acting recklessly and improperly, though in so doing they may be acting in direct disobedience to the regulations of the company (*n*). The principle on which these decisions are based was stated in the case of *Patten* v. *Rea* (*o*), in which it was laid down that "in an action for damages done by the negligent driving of a servant, the proper question to leave to the jury is—whether, at the time of the act complained of, the servant was driving on his master's business, and with his authority." In some instances however, it becomes a nice question, how far the servant can be regarded as being on his master's business, and thereby bringing his master within the rule just stated. Where a servant made a detour to call upon a friend whilst driving on his master's business (*p*), or drove out of his way to deliver a parcel of his own (*q*), or again, a carman, contrary to orders, leaving his horses and cart unattended whilst he went home to dinner, in consequence of which they ran away and caused damage (*r*) : in all these cases the master was held liable. But the master was relieved of responsibility for injury caused by his driver when he had started on an entirely independent journey after returning to his master's house (*s*) ; and also where a wine merchant's carman and clerk after delivering goods at Blackheath, were ordered to bring back empty bottles to the office at the Minories, and on the way back after crossing London Bridge, they went off in quite the opposite

(*m*) *Croft* v. *Alison* (1821), 4 B. & Ad. 590.

(*n*) *Limpus* v. *London General Omnibus Co.* (1863), 32 L. J. Ex. 34 ; *Ward* v. *London General Omnibus Co.* (1873), 42 L. J. C. P. 265.

(*o*) *Patten* v. *Rea* (1857), 26 L. J. C. P. 235.

(*p*) *Joel* v. *Morison* (1836), 6 C. & P. 501.

(*q*) *Sleath* v. *Wilson* (1839), 9 C. & P. 612 ; see also the remarks of Cresswell, J., in *Brown* v. *Copley* (1844), 7 M. & G. 566.

(*r*) *Whatman* v. *Pearson* (1858), L. R. 3 C. P. 422.

(*s*) *Mitchell* v. *Crasweller* (1853), 13 C. B. 237.

direction to that leading to the office, on some private errand of the clerk's, and whilst on this enterprise, ran over a child (*t*). The distinction between this last case and that of *Joel* v. *Morison* (*p*) is, to say the least of it, a fine one.

A master as bailee for hire, is liable for the negligence of his servant. This was decided in a case (*u*) where a master hired a carriage and horses which his servant drove, and instead of driving, as he should have done, direct back to the stable, drove off elsewhere on his own account, and whilst so doing caused the horses injury. A master has even been held liable for injury resulting from the drunkenness of a servant not in his regular employ, and engaged by his sister who was managing the business in his absence (*x*).

4. Master may be civilly liable for criminal acts of his servant.—*e.g.*, fraud. A goldsmith makes plate wherein he mingles dross, so that it was not according to the standard, and sent his servant to a fair to sell it according to the standard. The master was held responsible (*y*). A sheriff has been held liable for the fraud of his officer (*z*); an attorney for that of his clerk (*a*); a tramway company for an assault by a conductor on a passenger in the course of his employment (*b*); a banking company for that of their manager (*c*). The principle of these decisions was explained by *Willis*, J., in giving judgment in the last case. "But with respect to the question," said the

(*t*) *Storey* v. *Ashton* (1869), 38 L. J. Q. B. 223; 4 Q. B. 476.
(*u*) *Coupé Co.* v. *Maddick*, [1891] 2 Q. B. 413.
(*x*) *Wanstall* v. *Pooley* (1841), 6 Cl. & Fin. 910 (*n*).
(*y*) *Southern* v. *How* (1618), Cro. Jac. 471; *Cf. Hern* v. *Nichols* (1709), 1 Salk. 288.
(*z*) *Raphael* v. *Goodman* (1835), 8 B. & E. 565.
(*a*) *Dunkley* v. *Ferris* (1851), 11 C. B. 457.
(*b*) *Smith* v. *North Metropolitan Tramways Co.* (1891), 55 J. P. 630; 7 T. L. R. 459.
(*c*) *Barwick* v. *English Joint Stock Bank* (1867), 36 L. J. Ex. 147.

learned judge, "whether a principal is answerable for the acts of his agent done in the course of his master's business, and for the master's benefit, no sensible distinction can be drawn between the case of fraud and that of any other wrong, as to which the general rule is that the master is answerable for such wrong, if committed in the course of his service and for his benefit . . . . In all these cases it may be said, as it was said here, that the master has not authorized the act. It is true he has not authorized the particular act, but he has put his agent in his place as to a class of acts, and he must be answerable for the manner in which the agent conducts himself, in doing his business." A furniture dealer was held liable for the acts of his manager, who, having committed an assault, was convicted, and the release thereby of the servant under 24 & 25 Vict. c. 100, s. 45, from civil proceedings did not free the master from liability (*d*). Th master will not, however, be liable if his servant in carrying out his orders act illegally, when the purpose of his employment could be done in a lawful manner (*e*). It has been decided, for example, that a company is not responsible for an assault committed by the broker or his assistant when executing the warrant for recovery of arrears by distress, or sale of one of their customer's goods (*f*).

A master is liable for a trespass by his servant if committed by his command (*g*), or if it be the necessary consequence of something the master has ordered to be done (*h*).

(*d*) *Dyer* v. *Munday*, [1895] 1 Q. B. 742.
(*e*) *Wilson* v. *Rankin* (1865), 34 L. J. Q. B. 67.
(*f*) *Richards* v. *West Middlesex Water Co.* (1886), 15 Q. B. D. 660; see also *Poulton* v. *London and South-Western Rail. Co.* (1867), 36 L. J. Q. B. 294.
(*g*) *Morley* v. *Gaisford* (1795), 2 H. Bl. 441.
(*h*) *Gregory* v. *Piper* (1829), 9 B. & C. 591; *Lyons* v. *Martin* (1838), 8 A. & E. 512.

5. Liability of proprietors of public conveyances.—The proprietors of public conveyances are responsible for accidents caused not only as the result of negligence, but also for those due to want of judgment or skill on the part of their servants (*i*). "Every person," said Lord *Ellenborough*, in *Jackson* v. *Tollett* (*i*), "who contracts for the conveyance of others is bound to use the utmost care and skill, and if through any erroneous judgment on his part any mischief is occasioned, he must answer for the consequences . . . . in order to subject the master to damages, it must appear that there has been something to blame on the part of his servant, and he is blameable if he has not exercised the best and soundest judgment upon the subject; if he could have exercised a better judgment than he did, the owner is liable." The liability here referred to of the carriers of passengers is quite distinct from that of the carriers of goods. The latter are liable in all events save those due to the act of God or to the King's enemies. The former is not liable in case of accident (*k*). A railway company was held liable where a passenger on arriving at the station at which he intended to stop, entrusted his luggage to a servant of the company to be placed on a cab and the luggage was lost (*l*). And again a railway company was responsible for the negligence of their porter with whom luggage was left for ten minutes by a passenger whilst he went to take his ticket, and on coming back found it gone. The court was of opinion that the luggage being in the porter's hands for the purpose of transit, he was acting

(*i*) *Mayhew* v. *Boyce* (1816), 1 Stark. 423; *Jackson* v. *Tollett* (1817), 2 Stark. 38; *Hyeman* v. *Nye* (1888), 6 Q. B. D. 635, Lindley, J.

(*k*) *Crofts* v. *Waterhouse* (1825), 3 Bing. 321; *Redhead* v. *Midland Rail. Co.* (1869), 38 L. J. Q. B. 169; *Cf. Manzoni* v. *Douglas* (1880), 6 Q. B. D. 145.

(*l*) *Richards* v. *London, Brighton, and South Coast Rail. Co.* (1847), 7 C. B. Rep. 839.

within the scope of his employment in undertaking the charge of it (*m*). On the other hand, where, after leaving his luggage with a porter, the passenger left the station for an hour, the railway company was absolved from responsibility. It was said that here the luggage was watched by the porter on his own responsibility (*n*). If a railway company issues a through ticket available beyond its own system, and accident or loss occurs on another line over which the through journey passes, the company is liable (*o*). This only applies, however, to accidents due directly to the other company, and not to collateral operations (*p*). A servant travelling with his master by railway lost his luggage during the journey; the fact that his ticket had been taken by his master was no objection to his suing the company (*q*). A carrier is not liable for the loss of goods which have been entrusted to his servants to be carried by them for their own private gain (*r*).

6. Liability of innkeepers.—Innkeepers are responsible for the loss of the property of their guests due to their servant's negligence, unless the guest contributed by his negligence to the loss (*s*). The amount recoverable may be limited by statute (*t*) to 30*l*. An innkeeper is liable for larceny by his servant of a guest's property (*u*).

Lodging-house keepers, on the other hand, are not liable for the dishonesty of their servants, if there is no

(*m*) *Bergheim* v. *South-Eastern Rail. Co.* (1886), 17 Q. B. D. 215.
(*n*) *Welch* v. *London and North-Western Rail. Co.* (1886), 34 W. R. 166.
(*o*) *Birkett* v. *Whitehaven Junction Rail. Co.* (1859), 28 L. J. Ex. 348; *Mytton* v. *Midland Rail. Co.* (1859), 28 L. J. Ex. 385; *Thomas* v. *Rhymney Rail. Co.* (1871), 40 L. J. Q. B. 89.
(*p*) *Wright* v. *Midland Rail. Co.* (1873), 42 L. J. Ex. 89; 29 L. T. 436.
(*q*) *Marshall* v. *York N. and B. Rail. Co.* (1852), 21 L. J. C. P. 34.
(*r*) *Butler* v. *Basing* (1827), 2 C. & P. 613.
(*s*) *Medawar* v. *Grand Hotel Co.*, [1891] 2 Q. B. 11; *Huntly* v. *Bedford Hotel Co.* (1892), 56 J. P. 55.
(*t*) 26 & 27 Vict. c. 41, s. 3.
(*u*) *Kent* v. *Shuckard* (1831), 2 B. & Ad. 803; *Oppenheim* v. *White Lion Hotel Co.* (1871), 40 L. J. C. P. 93.

misfeasance on their part (*x*). But it is doubtful how far a lodging house keeper is responsible for the negligence of his servants. The court was equally divided in the case of *Dansey* v. *Richardson* (*y*), where the plaintiff lost a box, through the door being left open by a servant whilst on an errand on behalf of the plaintiff. Although divided as to the liability of the lodging-house keeper, the whole court were of opinion "that at least it was the duty of the defendant to take such care of her house and the things of her guests in it as every prudent householder would take."

7. Liability of corporations and trustees.—Corporations are subject to the same liability in regard to their servants as private individuals, unless there is some exemption on their behalf express or implied. Trustees appointed by statute for public purposes to levy toll, and deriving no personal benefit, are liable in their corporate capacity for damage sustained by default of their servants, to the same extent as absolute owners levying toll for their own benefit (*z*).

8. When master not liable.—It may now be useful to consider and endeavour to summarize those conditions in which it has been decided that the master is not liable for the acts of his servants.

(a.) *If servant act outside the scope of his authority*, and in so doing by his negligence cause injury. It is often a very nice question whether a servant is or is not acting within the scope of his authority. The dividing line is a very fine one. Consequently it is a point which has often been raised in the courts. In light of the decisions it is practically impossible to lay down any guiding principle. Each case must be decided

(*x*) *Holder* v. *Soulby* (1860), 29 L. J. C. P. 246.
(*y*) *Dansey* v. *Richardson* (1854), 23 L. J. Q. B. 217; 3 E. & B. 144.
(*z*) *Mersey Docks and Harbour Board* v. *Gibbs* (1865), 35 L. J. Ex. 225.

according to its own peculiar circumstances. A servant whose duty it was to keep good fires thought it desirable to clean the chimneys by a method of her own which consists in making a large fire of furze and straw. A much greater conflagration was caused than she anticipated, resulting in the next house being burnt down. Her master was held not liable for the damage done, on the ground that the servant had acted quite outside her duty and beyond the scope of any authority given her (*a*). A servant is acting outside the scope of his authority if he do an unlawful act not authorized by his master (*b*). Where a servant returning from his master's business drove in a direction contrary to his proper course home in order to do some business of his own, or, as Lord *Wensleydale* put it in another case, on some frolic of his own, the master was absolved from liability for injury then caused (*c*). A station-master wrongly arrested a passenger on the ground that he had not taken a ticket for his horse. The railway company successfully defended an action against them by the passenger for false imprisonment on the plea that the station-master could have no authority to act as he had done (*d*). After his master had left, a clerk went into his private room and used the lavatory. Having done so he forgot to turn off the tap and in consequence the water passed through the floor and injured the stock of a bookseller who had his shop underneath. The bookseller failed in his action against the master for compensation because his clerk had acted outside the scope of his authority in using the lavatory (*e*). It

(*a*) *McKenzie* v. *McLeod* (1834), 10 Bing. 385.

(*b*) *Lyons* v. *Martin* (1838), 8 A. & E. 512; *Richards* v. *West Middlesex Water Co.* (1885), 15 Q. B. D. 660.

(*c*) *Story* v. *Ashton* (1869), L. R. 4 Q. B. 476; see also *Mitchell* v. *Crassweller* (1853), 13 C. B. 237.

(*d*) *Poulton* v. *L. & S. W. R. Co.* (1867), 36 L. J. Q. B. 294.

(*e*) *Stevens* v. *Woodward* (1881), 6 Q. B. D. 318; *Cf. Ruddiman* v. *Smith* (1891), 53 J. P. 528; 60 L. T. 708.

has been decided that a railway porter who takes charge of a passenger's luggage for an hour whilst the passenger goes away altogether from the station is not acting within the scope of his authority (*f*). A shopkeeper is not responsible for injury due to the careless driving of his shopman, for it is not within his duty to drive the van (*g*). A tram conductor gave a passenger into custody on a charge of passing bad money. Special instructions had been issued to conductors not to give into custody without the authority of the inspector or time keeper for any cause other than assault. The passenger brought an action against the company for false imprisonment, but failed on the ground that the conductor was acting beyond the scope of his authority (*h*). Again a tramway company was empowered to exclude the public, and anyone obstructing their servants was liable to a fine. One of their servants forcibly prevented from entering the tramcar a person who was in consequence arrested. The company was not liable, for the matter was not within the scope of the conductor's authority (*i*).

The proprietor of a public house was held not liable for the conduct of a person who whilst acting as manager of the bar in his absence gave into custody a customer on the charge of attempting to pass false money, the arrest taking place after the customer had left the house, and when his master's property was no longer in danger (*k*). A travelling railway ticket examiner was acting within the scope of his authority in giving into custody a season ticket holder, for the passenger on bringing an

(*f*) *Welsh* v. *L. & N. W. R. Co.* (1886), 34 W. R. 166; *Cf. Bergheim* v. *S. E. R. Co.* (1886), 17 Q. B. D. 215.

(*g*) *Martin* v. *Ward* (1887), C. & S. Cas. 814.

(*h*) *Charleston* v. *London Tram. Co.* (1888), 86 W. R. 367. *Cf. Furlong* v. *South London Tram Co.* (1885), 48 J. P. 322.

(*i*) *Barry* v. *Dublin Tram. Co.* (1890), 26 L. R. Ir. 150.

(*k*) *Abrahams* v. *Deakin*, [1891] 1 Q. B. 586; *Cf. Sturm* v. *Hinshelwood* (1891), 55 J. P. 341.

action for false imprisonment recovered 50*l.* from the railway company (*l*). And Messrs. Spiers and Pond have been held responsible for the act of the manager of one of their restaurants in giving into custody persons acting in a riotous manner, for the manager had authority to do this in virtue of his position, and his employers were liable for the wrongful exercise of it (*m*). Between the rehearsal and a concert a musical instrument was left by one of the performers in an ante-room of the hall hired for the concert. During the interval the instrument was moved by the hall-keeper and injured. The society owning the hall was held not responsible, for it was not within the scope of the hall-keeper's employment to take charge of the instruments (*n*). An accident was caused through a horse being frightened by a band of the Salvation Army. An action for damages was consequently brought against the acknowledged head of that organization, General Booth, with however little advantage, for the court decided that there was not sufficient evidence to show that the players of the band were acting under his authority (*o*). In a recent case a policeman thinking the driver of an omnibus drunk stopped him when a quarter of a mile from the yard. The driver and conductor then authorized a stranger to drive the omnibus, and whilst he was so doing caused injury to the plaintiff. It was decided on appeal, reversing the decision of the Divisional Court, that the servants of the company were not acting within the scope of their authority in so appointing a driver. The facts in the case did not support the contention that there was a necessity for delegating someone to drive the omnibus.

(*l*) *Mulken* v. *Metropolitan Rail. Co.* (1892), 8 T. L. R. 232; see also *Lowe* v. *G. N. R. Co.* (1893), 62 L. J. Q. B. 524.
(*m*) *Ashton* v. *Spiers & Pond* (1893), T. L. R. 606.
(*n*) *Nonwith* v. *Over Darwen Indust. Soc.* (1894), 63 L. J. Q. B. 290.
(*o*) *London General Omnibus Co.* v. *Booth* (1894), 63 L. J. Q. B. 244.

Lord *Esher*, M.R., in his judgment, pointed out that the doctrine of *authority by necessity* is confined to certain well-known exceptional cases, as the master of a ship, or the acceptor of a bill of exchange for honour of the drawer (*p*). *A fortiori* the master will not be liable if the servant act maliciously without orders from his master. A master, for example, was not responsible for injury caused owing to his servant maliciously driving his carriage against another person's chaise (*q*).

(b.) *If the servant act illegally in doing what could be done in a lawful manner,* as by committing an assault when trying to recover property or executing the warrant for recovery of arrears by distress (*r*).

(c.) *If the third party omit to use ordinary care.* The law on this point was explained by Lord *Wensleydale* in *Bridge* v. *Grand Junction Rail. Co.* (*s*), which was an action brought by a passenger of one train against the company owning another which had run into collision with it. "The rule of law," he said, "is laid down with perfect correctness in the case of *Butterfield* v. *Forrester* (*t*), and that rule is that, although there may have been negligence on the part of the plaintiff, yet unless he might by the exercise of ordinary care have avoided the consequences of the defendants' negligence, he is entitled to recover; if by ordinary care he might have avoided them, he is the author of his own wrong." And in another case (*u*) it was said, "The proper question for the jury to consider in cases of this kind is whether the damage was occasioned entirely by the negligence or improper conduct of the

(*p*) *Gwilliam* v. *Twist*, [1895] 2 Q. B. 84; 59 J. P. 414.

(*q*) *McManus* v. *Crickett* (1800), 1 East. 106; but see *Chandler* v. *Broughton* (1832), 1 C. & M. 29.

(*r*) *Dyer* v. *Munday*, [1895] 1 Q. B. 742; *Richards* v. *W. Mid. Water Co.* (1885), 15 Q. B. D. 660; *Wilson* v. *Rankin* (1865), 34 L. J. Q. B. 62.

(*s*) *Bridge* v. *Grand Junction Rail. Co.* (1838), 3 M. & W. 244.

(*t*) *Butterfield* v. *Forrester* (1859), 11 East. 60; see also *Davis* v. *Mann* (1842), 10 M. & W. 546.

(*u*) *Tuff* v. *Warman* (1858), 27 L. J. C. P. 322; *per* WIGHTMAN, J.

defendant, or whether the plaintiff himself so far contributed to the misfortune by his own negligence or want of ordinary and common care and caution, that but for such negligence or want of care and caution on his part the misfortune would not have happened. In the first case the plaintiff would be entitled to recover, in the latter not, because but for his own misconduct the misfortune would not have happened."

(d.) *If a servant commit a trespass without orders*, as, for example, when a servant drives his master's carriage into a chaise and injures it (*x*). If, however, the master were present at the time he would hardly be absolved from responsibility though the servant acted without orders from him (*y*).

(e.) *If the master has parted with the whole control of the servant* as in the case of contractors (*z*).

(f.) *If the master is obliged by statute to employ a particular servant.* The best example of this is the compulsory employment of *pilots* under the *Merchant Shipping Act*, 1894 (*a*). It was formerly held (*b*) that even if the pilot was not compulsory, yet if being taken on board and in control of the ship, the master would not be liable. This, however, in the light of more recent decisions cannot now be held to be the law. The important judgment of Sir J. *Colville* in *The Velasquez* (*c*) lays down emphatically that the pilot must be wholly responsible. If it can be shown that any act of the master or crew contributed to the accident liability will ensue. "It has been established" he says "by a long

(*x*) *McManus* v. *Crickett* (1800), 1 East. 106; *Cf. Sharrod* v. *L. & N. W. R. Co.* (1849), 4 Ex. 580; *Roe* v. *Birkenhead Rail. Co.* (1852), 21 L. J. Ex. 9.

(*y*) *Chandler* v. *Broughton* (1832), 1 C. & M. 29. (*z*) See pp. 82—84.

(*a*) 56 & 57 Vict. c. 60, s. 633.

(*b*) *Lucey* v. *Ingram* (1840), 3 M. & W. 302.

(*c*) *The Velasquez* (1867), 36 L. J. Ad. 19; *Hammond* v. *Rogers* (1850), 7 Moore P. C. C. 160; *The Lion* (1869), 38 L. J. Ad. 57.; *The Earl of Auckland* (1861), 30 L. J. Ad. 124; *Hanna* (1867), 36 L. J. Ad. 1.

course of decisions that to entitle the owner of a ship which is under the charge of a licensed pilot, to the benefit of the provisions of the Act which exempts them from liability when the collision has been occasioned by the fault of the pilot, it lies upon them to prove that it was caused solely by his fault."

The master is not however relieved from responsibility if he is obliged to employ a *member of a particular class*, as for instance where freemen or apprentices to freemen of the Watermen and Lightermen's Co. must by statute (*d*) be employed to navigate on the Thames. In such a case the men employed are none the less the servants of those hiring them (*e*).

(**g.**) *Superior public officers are not liable for the acts of their inferiors.* A Postmaster-General, for instance, is not responsible for loss of letters by postmen or others under him (*f*). Similarly the captain of a sloop of war was held not answerable for damage done by her running down another vessel, the mischief appearing to have been done during the watch of the lieutenant who was upon deck, and had the actual direction and management of the steering and navigating of the sloop at the time, and when the captain was not on deck nor was called by his duty to be there (*g*).

This principle does not apply to the private servants of such officers (*h*).

(**h.**) *A master is not liable for the tortious acts of a servant lent to another person*, if such acts are committed whilst in the service of that person (*i*).

(*d*) 22 & 23 Vict. c. 123.
(*e*) *Martin* v. *Temperley* (1843), 4 Q. B. 298.
(*f*) *Lane* v. *Cotton* (1701), Lord Raymond, 646; *Whitfield* v. *Lord Le Despencer* (1778) Cowp. 754.
(*g*) *Nicholson* v. *Mounsey and Symes* (1812), 15 East. 384.
(*h*) *Lord North's case* (1858), Dyer 161.
(*i*) *Rourke* v. *White Moss Colliery Co.* (1877), 46 L. J. C. P. 283; see also *Donovan* v. *Laing*, [1893] 1 Q. B. 629; *Johnson* v. *Lindsay*, [1891] A. C. 371; *Cameron* v. *Nystrom*, [1893] A. C. 308.

(i.) *Telegraph companies* are not liable for loss suffered through telegrams being wrongly sent, owing to the negligence of their clerks (*k*).

Who is the master.—There has been great difficulty in some cases in deciding who is the master. This has arisen especially with respect to the party responsible for injury or damage due to the negligence of a coachman sent out by a job-master, with horses to draw the hirer's carriage. In an old case four horses and postillions were hired to draw a private carriage to Windsor. On the way down they turned over a chaise with the result that the occupant had his collar-bone broken. An action brought to fix the responsibility on the owner of the carriage was unsuccessful, and the owner of the horses was held liable (*l*). But in another case where the owner of a carriage hired of a stable-keeper a pair of horses to draw it for a day, and the owner of the horses provided a driver, through whose negligent driving an injury was done to a horse belonging to a third person, the court was equally divided in opinion as to whether the owner of the carriage was or was not liable for the injury (*m*). This question was, however, settled in a case (*n*) which has since been regarded as the authority upon the subject. The facts of this case were as follows: The owners of a carriage were in the habit of hiring horses from the same person, to draw it for a day on a drive, and the owner of the horses provided a driver through whose negligence an injury was done to another person. The owners of the carriage had always been driven by the same driver, he being the only regular coachman in the employ of the owner of the horses; they had always paid him a fixed

(*k*) *Dixon* v. *Reuter's Telegraph Co.* (1877), 46 L. J. Q. B. 197; *Playford* v. *U. K. Elect. Co.* (1869), 38 L. J. Q. B. 249; L. R. 4 Q. B. 706.

(*l*) *Sammell* v. *Wright* (1805), 5 Exp. 263; see also *Dean* v. *Braithwaite* (1803), 5 Exp. 36; *Smith* v. *Lawrence* (1828), 2 M. & W. 1.

(*m*) *Laugher* v. *Pointer* (1826), 5 B. & C. 547.

(*n*) *Quarman* v. *Burnett* (1840), 6 M. & W. 499.

sum for each drive, and had provided him with a livery which he left at their house at the end of each drive, and the injury was occasioned by his leaving the horses while so depositing the livery in their house; and yet as the driver was the servant of the owner of the horses, with whom a contract was made by the owners of the carriage, and that contract did not raise the relation of master and servant at all between the parties thereto, the owners of the carriage were held not liable for the act of the driver. Lord *Abinger*, C.B., on another occasion (*o*) said it had always appeared to him that the Court of King's Bench had pursued an erroneous course in *Laugher* v. *Pointer*, where they allowed the question then raised to be discussed as if it were a question of law. In his opinion it was impossible to lay down a rule of law on such a point. No satisfactory line could be drawn at which, as a matter of law, the general employer of a driver ceased to be responsible, and the temporary one became so. Each case of this class must depend upon its own circumstances, and the jury, taking the circumstances of the case into consideration, must undertake the task of deciding whether at the time of the accident the driver was acting as the servant of the jobber or of the hirer. These views would appear to have been acted upon when the hirer by his conduct has acknowledged himself liable. For example, the defendant hired a carriage and four horses with postillions to go to Epsom, and on the road overturned a gig and injured the plaintiff at a toll gate. After the accident the defendant, who was on the driver's box, offered money to the injured party and gave him his card: and the owner of the gig afterwards called upon the defendant who then offered an explanation. It was held that the jury were warranted in inferring

(*o*) *Brady* v. *Giles* (1835), 1 Mood. & Rob. 1.

that the postillions had acted as they did with the sanction of the defendant, and consequently that he was liable for the injury done (*p*). It was said the question was whether the evidence did not show that the defendant had so conducted himself as to be liable as a co-trespasser with the postillions whose misconduct had given rise to the injury, either by the active part he took, or from his tacit consent.

The decision in *Quarman* v. *Burnett* was followed in the more recent and analagous case of *Jones* v. *Corporation of Liverpool* (*q*). Here a contractor supplied horses and drivers to draw the watering carts belonging to the Liverpool Corporation. The drivers were employed and paid by the contractor and were not under the control of the corporation except that their inspector told them what streets to water. It was held that the corporation was not liable for injuries caused by one of the drivers.

Ratification.—If the master ratifies and adopts the act of his servant even when done without any precedent authority, whether it be for his own advantage or otherwise, and founded on tort or on contract, the master becomes liable to the same extent as if the act had been done by his command (*r*). The act done must be for and on behalf of the master (*s*).

Double liability.—A master may be liable to two actions by the same plaintiff for the same accident, *e.g.*, in the county court for damage to a vehicle, and in the High Court for personal injuries (*t*).

Master no longer liable if the servant has been convicted and compensation paid by him (*u*).

(*p*) *McLaughlin* v. *Pryor* (1842), 4 M. & G. 48.
(*q*) *Jones* v. *Corporation of Liverpool* (1885), 14 Q. B. D. 890.
(*r*) *Wilson* v. *Tummon* (1845), 6 Scott, N. R. 904.
(*s*) *Wilson* v. *Barker* (1833), 4 B. & Ad. 616.
(*t*) *Brunsden* v. *Humphreys* (1884), 53 L. J. Ex. 476.
(*u*) *Wright* v. *London General Omnibus Co.* (1877), 46 L. J. Q. B. 429; L. R. 2 Q. B. 271.

CHAPTER IX.

Liability of the Master to Third Parties for the Contracts of his Servant.

The relationship of a master to his servant in regard to contracts made by the latter, is a phase of that wider relation of principal and agent, as expressed by the maxim, *Qui facit per alium, facit per se*, if, indeed, the responsibility of a principal for his agent did not originate in and grow out of the older relationship of master and servant.

Authority of servant express or implied.—But a servant as such, as a mere agent, has no authority whatever to bind his master by his contracts; but a servant may be invested by his master with such authority either expressly or by implication, and whether the authority have been antecedently given, or be subsequently recognized by adoption of the contract, the effect will be the same (*x*).

Express authority may be given by deed, in writing or by parole, and the liability of the master will be limited by the extent or scope of authority thus shown to have been given. When the authority is given in writing, little doubt or difficulty can occur in determining the master's liability; it is when given by word of mouth that the uncertainty often occurs. When the authority is only implied, the doubts or difficulties naturally often become greater still, for its extent must necessarily be a matter of inference, to be gathered from the course of dealing adopted or sanctioned by the master, and, consequently, the limit of his responsibility

(*x*) *Rusby* v. *Scarlett* (1803), 5 Esp. 76.

will in such case be equally undefined and uncertain. This implied authority is the more common and the more mischievous in its effects, for it is frequently unintentionally conferred, and its very existence, perhaps, only discovered by the master through his being called upon to answer for its abuse.

Scope of implied authority.—The scope of the implied authority of the servant depends on the extent of his employment, and on how far the master, by his conduct—active or passive—holds him out as his agent. Where a servant is in the habit of transacting any particular branch of his master's business, he thereby derives a general authority and credit from him in all matters of a like nature; nor can this general authority be determined so as to affect third persons acting on the faith of it, without notice to them of its determination. Therefore, where a servant in the habit of transacting affairs of that nature, was sent to cash a draft on a banker, but instead of doing so, in order to save himself trouble, got a third party to cash the draft, and afterwards, before the draft was presented, the banker failed; it was held that the master was bound by such act of his servant, and must bear the loss (*y*). Or take the ordinary case of sending a servant to buy goods without providing him beforehand with the money to pay for them: under such circumstances, an implied authority is necessarily given to the servant to pledge his master's credit: and upon the strength of this authority, not only will the master be liable for the goods so obtained, notwithstanding his having afterwards sent the servant with the money to pay for them, if, in fact, it is not paid over to the tradesman, but also for any other goods which may subsequently be obtained by such servant upon his master's credit; though he may have been

(*y*) *Nickson* v. *Brohan* (1713), 10 Mod. 100.

sent with the money to pay for the same, and have appropriated it, or may have surreptitiously obtained the things for his own use. And a single instance of recognition by the master of a contract made on his behalf by his servant, has been considered sufficient to raise the presumption of an implied authority (*z*). And the liability of the master under these circumstances continues even after the discharge of the servant, unless it can be shown that the tradesman was aware at the time that the servant had no such authority, or knew that he had been discharged from his situation (*a*). If, however, the servant is always provided with ready money beforehand, no such implication will arise, and the master will be under no liability to pay for the goods ordered by the servant. This point was raised in the case of *Rusby* v. *Scarlett* (*b*), where the master was in the habit of giving his coachman money to pay for hay and straw. The servant appropriated the money given to his own use, and bought the goods on credit, and charged the amount to his master, who was quite unknown to the tradesman supplying them. The tradesman sued the master for the money, and at the trial, Lord *Ellenborough* said: "It is material to see when the money was given. If the servant was always in cash beforehand to pay for the goods, the master is not liable, as he never authorized him to pledge his credit; but if the servant was not so in cash, he gave him a right to take up the goods on credit, and would be liable." And even where a tradesman had supplied the defendant's family with

(*z*) *Hazard* v. *Treadwell* (1722), 1 Stark. 506; *Bolton* v. *Hillersden* (1697), 1 Ld. Raym. 224; *Sir Rob. Wayland's case* (1708), 3 Salk. 234, Holt, C.J.; *Rusby* v. *Scarlett* (1803), 5 Esp. 76; *Miller* v. *Hamilton* (1872), 5 C. & K. 433; *Summers* v. *Soloman* (1857), 7 E. & B. 879; *Tobin* v. *Crawford* (1842), 9 M. & W. 718.

(*a*) *Monk* v. *Clayton*, quoted in *Nickson* v. *Brohan* (1713), 10 Mod. 110.

(*b*) *Rusby* v. *Scarlett* (1803), 5 Esp. 76.

bread, for which weekly bills were delivered to his housekeeper, who had charged for the payment of the same in her accounts, and the later bills had been regularly paid and receipted, but the earlier had not, the defendant was held liable, for in the absence of proof of the money having been given to the housekeeper to pay the later bills, the question of negligence on the part of the baker in receipting the later and leaving the earlier bills unpaid, could not be raised (*c*).

Private agreement between master and servant does not affect former's liability.—The liability of the master is not in the least diminished by any private agreement between him and his servant, which is unknown to the party dealing with the latter. This point was raised in *Precious* v. *Abel* (*d*), a case in which a farrier brought an action for work and labour, and the defence set up was that the defendant, by an agreement with his groom, allowed him five guineas a year to keep the horses properly shod, and furnish them with proper medicines when necessary. Lord *Kenyon* said this was no defence to the action, unless the plaintiff knew of this agreement, and expressly trusted the groom. That if a servant buys things which come to his master's use, the master should take care to see them paid for, for a tradesman has nothing to do with any private agreement between the master and servant. In another case, a coachman went in his master's livery, and hired horses of a horse jobber, and they were sent and used in his master's carriage. It was then said (*e*) that if the coachman did not inform the plaintiff of the agreement between him and his master, the master's sending him forth into the world wearing his livery, to hire horses which he (the master) afterwards used,

(*c*) *Miller* v. *Hamilton* (1832), 5 C. & P. 433.
(*d*) *Precious* v. *Abel* (1795), 1 Esp. 350.
(*e*) *Rimell* v. *Sampayo* (1824), 1 C. & P. 254, *per* LITTLEDALE, J.

knowing of whom they were hired, and yet not sending to ascertain if his credit had been pledged for them, an implied authority was given, and the master was bound to pay for the hire. The jury, however, came to the conclusion that the plaintiff did know of the agreement, and so found a verdict for the defendant.

Liability of master for servant's warranty.—How far a master is bound by a warranty given by his servant when sent to sell something on his behalf depends on the nature of the master's business, the place of sale, and the scope of employment of the servant. If, for example, a horse dealer's servant be sent into a market to sell a horse, with express orders not to warrant him, but the servant do notwithstanding warrant the horse, the master will be bound by the warranty, because the servant is acting within the general scope of his employment (*f*). And the responsibility would appear to be the same if the master is not a dealer, if the horse is sent to Tattersall's (*g*), or to a fair (*h*) for sale. But the servant of a private owner entrusted on one particular occasion, not at a fair or other public mart, to sell and deliver a horse, is not, therefore, by law authorized to bind his master by a warranty; but the buyer who takes a warranty in such a case takes it at the risk of being able to prove that the servant had his authority to give it (*i*). A servant who delivers a horse, already sold by his master, to the buyer, has no authority to give a warranty binding on his master (*k*). Or if, when a servant is sent to receive payment for the article sold,

(*f*) *Howard* v. *Sherrard* (1867), 36 L. J. C. P. 42; *Baldry* v. *Bates* (1885), 52 L. T. 620; *Cf.* Lord KENYON in *Fenn* v. *Harrison* (1790), 3 T. R. 760.
(*g*) *Helyear* v. *Hawke* (1803), 5 Esp. 72.
(*h*) *Brooks* v. *Hassall* (1883), 49 L. T. 669.
(*i*) *Brady* v. *Todd* (1861), 30 L. J. C. P. 223.
(*k*) *Woodin* v. *Burford* (1834), 2 Cr. & M. 391.

he consents to an alteration in the warranty, the master will not be liable for the altered warranty (*l*).

Examples of implied authority. A tradesman is bound by the contract of his foreman (*m*), a company by the orders of their manager (*n*), or by the acts of their managing director (*o*). Directors by the contract of their secretary (*p*). Shareholders in a mine by the contract of the purser (*q*). A firm of traders may be liable for the indorsement of a cheque by their manager (*r*). If a book-keeper in a carrier's office agrees to carry in a particular way or at certain rates, his master will be bound by the agreement (*s*). In a case (*t*) of this kind, Lord *Tenterden* remarked: "If a person goes to the office of a carrier, and asks what a thing will be done for, and he is told by a clerk or servant who is transacting the business there, that it will be done for a certain sum, the master can charge no more. It is said that this person had no authority to make such a bargain; however, I am of opinion that it signifies nothing in this case, whether the servant did his duty, or made a mistake. . . If men were not bound by such bargains as this, business could not go on." But the implied authority of a carrier's book-keeper does not extend to enable him to bind his master by a promise to make compensation for the loss of a parcel, unless the book-keeper can be shown to be a general agent, and that the principal ratifies the promise which he makes (*u*).

(*l*) *Strode* v. *Dyson* (1804), 1 Smith, 400.
(*m*) *Richardson* v. *Cartwright* (1844), 1 C. & K. 328.
(*n*) *Smith* v. *Hull Glass Co.* (1852), 11 C. B. 847.
(*o*) *Totterdell* v. *Fareham Brick and Tile Co.* (1866), 35 L. J. C. P. 278.
(*p*) *Maddick* v. *Marshall* (1864), 17 C. B. (N.S.) 829.
(*q*) *Geake* v. *Jackson* (1867), 136 L. J. C. P. 108.
(*r*) *Charles* v. *Blackwell* (1876), 45 L. J. C. P. 542.
(*s*) *Long* v. *Horne* (1825), 1 C. & P. 610.
(*t*) *Wingfield* v. *Packington* (1827), 2 C. & P. 599.
(*u*) *Olive* v. *Eames* (1817), 2 Stark, 181.

A servant was sent to a salesman with a load of hay to be disposed of on account of his employer, and the salesman having already paid the price of the hay, sold it, and told the servant to deliver it to the purchaser. The servant was cheated out of the hay by some one personating the real purchaser. The salesman then brought an action against the master of the servant to recover the price, and he was successful, it being held that his conduct had not made the servant his agent, and that the latter had all the time been in the employment of his master (*x*).

Master may be liable for one not his servant.—Under certain conditions, a master may be liable for one not actually his servant, but who from the circumstances of the case might well be presumed by a stranger to be so. And such decisions may be justified on the principle laid down long ago by Chief Justice *Holt*, that "seeing somebody must be the loser by the deceit, it is more reasonable that he that employs and puts a trust and confidence in the deceiver should be a loser than a stranger (*y*)." For example, it has been held that payment made to a person found in a merchant's counting-house, and appearing to be entrusted with the conduct of the business, is good payment to the merchant, though it turns out that the person was never employed by him (*z*). Similarly, a person in an attorney's office refusing a tender (*a*). Payment to a sheriff's bailiff's assistant is good against the sheriff (*b*). And a man was once held liable for a guarantee by his son, a minor, who had, in three or four instances, signed for his father, and had accepted bills of exchange for him (*c*).

(*x*) *Gingell* v. *Glasscock* (1831), 8 Bing. 86.
(*y*) *Hern* v. *Nichols* (1701), 1 Salk. 289.
(*z*) *Barrett* v. *Deere* (1828), Mood. & M. 200.
(*a*) *Wilmott* v. *Smith* (1829), Mood. & M. 238.
(*b*) *Gregory* v. *Cotterell* (1855), 5 E. & B. 571.
(*c*) *Watkins* v. *Vince* (1818), 2 Stark. 368.

When master not liable.—It may be advantageous here to endeavour to summarize briefly the conditions under which the master is absolved from responsibility for the contracts made by his servant.

1. *When the servant acts beyond the limits of his authority.*—Whether that authority be express or implied. Where a servant paid the butcher's bill every week for a long period, and then, instead of paying for the meat bought, took credit and pocketed the money, the master was not liable (*d*). Again, where the master of a family was in the habit of paying ready money for a given quantity of goods supplied by a tradesman, and the servant clandestinely took in more, the master was held not liable, for it was sufficient to put the tradesman on his guard, and make him inquire of the master whether the extra quantity was for his use (*e*). A butler ordered brandy in the name of his master, it was delivered, but consumed by the butler, the master was not privy to the order, delivery, or consumption, and was accordingly freed from all liability by Lord *Ellenborough*, who observed, that we must give up housekeeping if such evidence as this were sufficient to bind a master (*f*). A tailor received from a lady an order for two suits of livery a year for her coachman. At the request of the coachman, the tailor took back one of the suits, and supplied in its place a suit of ordinary clothes. The mistress refused to pay for the latter, and the tailor failed in an action to recover their value (*g*). If a servant, without his master's knowledge, employ a tradesman his master has never employed before, the master will not be liable. For example, a servant having broken his master's carriage, employed a

(*d*) *Stubbing* v. *Hertz* (1791), 1 Peake, 66.
(*e*) *Pearce* v. *Rogers* (1800), 3 Esp. 214.
(*f*) *Manmder* v. *Conyers* (1817), 2 Stark. 281.
(*g*) *Hunter* v. *Dowager Countess of Berkeley* (1836), 7 C. & P. 413.

coachmaker to mend it who had never been employed by his master, who was totally ignorant of what had happened. On the master refusing to pay for the repairs, the coachmaker wished to keep the carriage as a lien, but the law would not allow him to do so, and he was compelled to return it to its rightful owner (*h*). If a man leaves his child with a servant, and gives that servant money enough for the supply of necessaries to the child, the servant is not a general agent to provide such things on his master's credit (*i*).

The bailiff of a farm through whose hands all payments and receipts take place, has no implied authority to pledge the credit of his master by drawing and endorsing bills of exchange in the name of the latter (*k*).

A railway station-master has no implied authority to enter into a contract with a surgeon to attend a passenger injured by an accident on the railway, and the railway company are not therefore liable to the surgeon for services rendered to such a passenger under these circumstances (*l*). It has since been decided that the general manager of a railway has such authority (*m*).

A master is not liable if the seller to the servant knowing full well who is his master chooses to debit the servant (*n*).

How far master bound by statements of servant.—A master is not bound by the statements of his servant, unless they are made in the course of his master's business, *e.g.*, the declaration of a pawnbroker's shopman with regard to plate received otherwise than in

(*h*) *Hiscox* v. *Greenwood* (1803), 4 Esp. 174.
(*i*) *Atkyns* v. *Pearce* (1857), 26 L. J. C. P. 252; *per* COCKBURN, C.J.
(*k*) *Davidson* v. *Stanley* (1841), 2 M. & G. 721.
(*l*) *Cox* v. *Midland Counties Rail. Co.* (1849), 48 L. J. Ex. 65; 3 Exc. 268; *Cf. Hawtayne* v. *Bourne* (1841), 7 M. & W. 595.
(*m*) *Walker* v. *G. W. R. Co.* (1867), 36 L. J. Ex. 123; *Lanyon* v. *G. W. Rail. Co.* (1873), 30 L. T. 173; but *Cf. Gwilliam* v. *Twist*, [1895] 2 Q. B. 84.
(*n*) *Thomson* v. *Davenport* (1829), 9 B. & C. 90; *per* LITTLEDALE, J.

connection with the pawnbroking business, were held by the court not to be evidence against his master (*o*).

A letter written to the plaintiff's attorney a week before the commencement of the action by the attorney who afterwards acted for the defendant is not binding on his client (*p*).

2. *A servant has no implied authority to bind his master in matters collateral* to a contract within the scope of his employment. The following examples will explain this statement. A payment made to a clerk or apprentice in his master's counting-house, not in the usual course of business, but on a collateral transaction, is not a good payment to the master (*q*).

If a servant sent to receive money take a bill instead, and give a receipt, the master will not be bound by the receipt unless the bill is paid (*r*). Or a clerk who takes money over the counter will not bind his master if he receive a cheque by post (*s*).

A traveller who takes orders in the country, and is authorized to take payment for them, is not justified in taking goods in place of money (*t*).

A man employed to take orders has not necessarily implied authority to take payment for them (*u*).

If a servant employed to keep his master's shop, or to sell for him, give away his master's goods, the latter may maintain an action against the receiver (*x*).

A railway company is not liable on a contract made by their general manager regarding land (*y*).

(*o*) *Garth* v *Howard and Fleming* (1832), 8 Bing. 451; *Cf. G. W. Rail. Co.* v. *Willis* (1865), 34 L. J. C. P. 195; 18 C. B. (N.S.) 748.
(*p*) *Wagstaff* v. *Wilson* (1832), 4 B. & Ad. 339.
(*q*) *Sanderson* v. *Bell* (1834), 2 Cr. & M. 304.
(*r*) *Ward* v. *Evans* (1704), 2 Salk. 442.
(*s*) *Kaye* v. *Brett* (1850), 5 Exc. 269.
(*t*) *Howard* v. *Chapman* (1831), 4 C. & P. 508.
(*u*) *Puttock* v. *Warr* (1858), 31 L. T. 86.
(*x*) Noy's Max. 218, 9th ed.
(*y*) *Wilson* v. *West Hartlepool Rail. Co.* (1865), 34 L. J. Ch. 241; 11 L. T. (N.S.) 327.

When servant a special agent.—Several of the preceding cases (*z*) illustrate the principle that if the master gives his servant express authority, the latter becomes a special agent, and the master's liability will be strictly limited by that agency. Where the servant is a special agent sent on some one particular errand, or to carry out one particular transaction, it is incumbent on the third party (who is aware that the servant is a special agent) to inform himself of the extent of the servant's authority (*a*).

3. *Master not liable if his servant pledge his credit after dismissal* if knowledge of the fact is brought home to the third party.

Therefore, if a person who has dealt with a tradesman on credit, afterwards resolve to discontinue buying on credit, and to pay ready money on delivery for the things bought, it is not sufficient to give notice of this intention to the tradesman's servant, it must be given to the tradesman himself (*b*). Upon a similar principle, where a servant is in the habit of receiving sums of money for the use of his master, and the servant pays these over to the master from time to time without any written vouchers passing between them, the presumption of law is that all sums so received by the servant are regularly paid over to the master; therefore, in an action by the master against the servant for money had and received, it is not enough for the master to prove that sums have been received by the servant to his use;

(*z*) *Ward* v. *Evans* (1704), 2 Salk. 442; *Kaye* v. *Brett* (1850), 5 Exc. 269; and see also *Waters* v. *Brogden* (1827), 1 Y. & J. 457; *Thorold* v. *Smith* (1707), 11 Mod. 87. "Where a man has authority to receive money, he cannot receive anything else." HOLT, C.J.

(*a*) *Henkel* v. *Pape* (1871), 40 L. J. Ex. 15; *Jordan* v. *Norton* (1838), 4 M. & W. 155; *Neile* v. *Turton* (1827), 4 Bing. 149; *Alexander* v. *Mackenzie* (1848), 6 C. B. 766.

(*b*) *Gratland* v. *Freeman* (1800), 3 Esp. 85; *Cf. Summers* v. *Solomon* (1857), 7 E. & B. 879; 26 L. J. Q. B. 301.

but the onus lies upon him to prove by positive evidence that the servant has not duly accounted with him (*c*).

If a long time has elapsed since the last order was given by the servant, a presumption of discharge is raised, which should put the tradesman on his guard (*d*).

Death of the master revokes the authority of the servant, and the acts of the latter are not binding on the master's representatives (*e*).

Ratification.—If the master ratifies a contract entered into by his servant, he will be liable upon it just as if he had previously authorized it: *Omnis ratihabitio retrotrahitur et mandato priori equiparatur* (*f*). But the servant at the time of making the contract must have purported to act on his master's behalf (*g*). Ratification by the master means the adoption of the contract in its entirety; he cannot reject part and adopt the rest (*h*).

Mere user of the goods by the master does not render him liable, but it is strong *primâ facie* evidence against him, and the onus will be on him to prove either that credit was given to the servant, or that the servant had no authority to pledge his credit (*i*).

(*c*) *Evans* v. *Birch* (1811), 3 Camp. 10.
(*d*) *Staveley* v. *Uzzielli* (1860), 1 F. & F. 284; ——— v. *Harriso* (1699), 12 Mod. 346.
(*e*) *Blades* v. *Free* (1829), 9 B. & C. 169.
(*f*) Story on Agency, 239; *Bird* v. *Brown* (1850), 4 Exc. 798.
(*g*) *Wilson* v. *Tummon* (1843), 6 M. & G. 236.
(*h*) *Bolton* v. *Lambert* (1889), 58 L. J. Ch. 425; *Cf. Ferguson* v. *Taylor* (1829), 9 B. & C. 59.
(*i*) *Pearce* v. *Rogers* (1800), 3 Esp. 214.

CHAPTER X.

Liability of Master for Crimes of His Servant.

If a master command his servant, who is innocent of its illegal nature, to do a criminal act, he will be liable for it (*k*). But if the servant also knows that the act is a criminal one, they will both be liable (*l*). For example, a servant knowingly received stolen goods for his master who, though absent, knew they were stolen. It was held that they could be jointly indicted for receiving the goods (*m*).

A master has also been convicted for stealing coal by the hands of his servants (*n*).

Libels in newspapers.—The master may be liable, although the act done by the servant is unknown to him, if it is of such a nature as to come within the scope of his employment, for the authority of the master will then be implied. This principle has been several times illustrated by libels published in newspapers. The celebrated letters of Junius were published in a periodical called the "London Museum," and were sold at the shop of a Mr. Almon by a lad in his employment, and the periodical was purported to be printed for him. Mr. Almon was unaware of these libels communicated to the periodical, and only discovered it after several copies had been sold, when he took immediate means to stop the sale. Notwithstanding these efforts, however, the unfortunate bookseller was convicted (*o*).

(*k*) *R* v. *Higgins* (1729), 2 Stra. 882.
(*l*) *R.* v. *Williams* (1851), 1 C. & K. 589.
(*m*) *Reg.* v. *Parr* (1841), 2 Moo. & R. 346.
(*n*) *R.* v. *Bleasdale* (1848), 2 C. & K. 756.
(*o*) *R.* v. *Almon* (1770), 5 Burr. 2686.

A few years later, Mr. Walter, the proprietor of the "Times," although living down in the country and taking no active part in the conduct of the newspaper, was made liable for libellous statements printed in it (*p*). The state of the law being thus considered onerous, it was amended by statute (*q*) in 1843, which made it "competent to such a defendant to prove that the publication was made without his authority, consent or knowledge, and that the said publication did not arise from want of due care or caution on his part." And the proprietor of a newspaper is not now held responsible for the acts of his editor who has general authority to conduct the journal according to his own discretion (*r*).

Quasi-criminal acts.—Not unfrequently the criminal liability of the master for the acts of his servant exists by statute. This liability is distinguishable from that of ordinary crime; it is more truthfully described as penal, and might perhaps be termed quasi-criminal. As *Bayley*, B., observed in the case of the *Att.-Gen.* v. *Siddon* (*s*): "I consider this as being not properly a criminal proceeding, but a civil proceeding for the purpose of recovering that which is a debt for the Crown. It is a penal proceeding." This was a case under the **Revenue Laws**, which best illustrate this kind of liability, and it dealt with the harbouring and concealing smuggled goods by a trader, who was held liable in penalties for the illegal act of his servant in procuring a forged permit. The servant did this upon the exigency of the occasion, when the goods were discovered, with a view to protect them. The servant's

(*p*) *R.* v. *Walter* (1800), 3 Esp. 21; *R.* v. *Gutch* (1829), Moo. & Mal. 433, Lord TENTERDEN, C.J.

(*q*) 6 & 7 Vict. c. 96.

(*r*) *Reg.* v. *Holbrook* (1879), 48 L. J. Q. B. 11; 4 Q. B. D. 42; see *Cooper* v. *Slade* (1858), 6 H. L. C. 793; 27 L. J. Q. B. 449.

(*s*) *Att.-Gen.* v. *Siddon* (1830), 1 Cro. J. 220; see also Anon. Dyer, 2386; *Lane* v. *Cotton* (1701), 12 Mod. 473.

act was one done in the conduct of his master's business, though the master was himself absent at the time. The learned Baron remarked that "If the servant adopts means to save his master, who is carrying on an illegal trade, and can have no other object, *primâ facie* this act ought to be considered an act done by him in the service of his master, and within the probable authority which the master gives to his servant with reference to articles of that description."

The Licensing Laws afford another example. By the *Licensing Act*, 1872 (*t*), it is made an offence for any licensed person to supply liquor to a constable on duty. And it has been decided that if liquor is so served by a servant of the publican without the latter's knowledge, the publican is liable (*u*). The same statute makes gaming in licensed houses illegal, and from cases (*x*) which have come before the courts the inference may be drawn that actual knowledge on the part of the publican is not essential to make him liable to the penalty the law imposes; but he will be so liable if he or even his servant connives at gambling going on. If the servant is not in charge of the premises, the master would appear not to be liable (*y*).

Bakers.—By statute (*z*), a baker is liable to a penalty for adulterating his bread with alum; and a baker has been held indictable for the act of his servant in putting alum into the bread (*a*).

(*t*) 35 & 36 Vict. c. 94, s. 16.
(*u*) *Mullins* v. *Collins* (1874), 43 L. J. M. C. 110.
(*x*) *Besley* v. *Davies* (1876), 45 L. J. M. C. 27; 10 Q. B. D. 84; *Redgate* v. *Haynes* (1876), 1 Q. B. D. 89; *Cundy* v. *LeCocq* (1884), 13 Q. B. D. 207.
(*y*) *Somerset* v. *Hart* (1884), 12 Q. B. D. 360; *Bond* v. *Evans* (1887), 21 Q. B. D. 249.
(*z*) 6 & 7 Will. 4, c. 37, amending 36 Geo. 3, c. 22, and 37 Geo. 3 c. 98.
(*a*) *R.* v. *Dixon* (1814), 3 M. & S. 11.

Food and Drugs Act.—Under the Food and Drugs Act, 1875 (*b*), a master is liable for the acts of his servant, though ignorant of them, and even when he has given orders against them (*c*). But he will not be so liable if the acts are outside the scope of the servant's authority (*d*).

Other Acts.—The same principle applies under the *Pharmacy Act*, 1867 (*e*), the *Pawnbrokers Act*, 1872 (*f*), and the *Contagious Diseases (Animals) Act*, 1894 (*g*). Under the last-mentioned Act, a master has been convicted for sending by his servant diseased animals for sale (*h*).

Nuisances.—A master is criminally liable for nuisances committed by his servant. As was remarked long ago by Chief Justice *Holt*: "If my servant throw dirt in the highway I am indictable" (*i*). The directors of a gas company have been held answerable for their superintendent and engineer, who had a general authority to manage the works, for turning foul refuse into a stream, though they were ignorant of the act, being a departure from the original and understood method, which the directors had no reason to suppose was discontinued. The chairman, vice-chairman, superintendent, and engineer were all convicted (*k*). The owner of a quarry was also held liable to be indicted for a public nuisance caused by acts of his

(*b*) 38 & 39 Vict. c. 63.
(*c*) *Brown* v. *Foot* (1892), 61 L. J. M. C. 160.
(*d*) *Newman* v. *Jones* (1886), 17 Q. B. D. 132; *Kearley* v. *Tonge* (1891), 60 L. J. M. C. 159.
(*e*) 31 & 32 Vict. c. 121, s. 17.
(*f*) 35 & 36 Vict. c. 93, s. 8.
(*g*) 57 & 58 Vict. c. 57 (Consolidating Act), repealing and amending Acts of 1878 and 1868.
(*h*) *Nichols* v. *Hall* (1873), 42 L. J. M. C. 605; 28 L. T. 473; 21 W. R. 579.
(*i*) *Turberville* v. *Stamp* (1698), 1 Raym. 264.
(*k*) *Reg.* v. *Medley* (1834), 6 C. & P. 292; *Reg.* v. *G. N. R. Co.* (1846), 9 Q. B. 315.

workmen throwing slate and other refuse into a navigable river, though done without his knowledge and against his general orders (*l*).

With regard to *smoke nuisance*, a master has been held liable under the Public Health Act, 1875 (*m*), for his stoker's negligence in not seeing that the smoke of his furnace was consumed (*n*).

(*l*) *Reg.* v. *Stephen* (1866), 1 Q. B. 702.
(*m*) 38 & 39 Vict. c. 55, s. 91, sub-s. (7).
(*n*) *Niven* v. *Greares* (1890), 55 J. P. 548; but see *Chisholm* v. *Doulton* (1889), 22 Q. B. D. 736.

CHAPTER XI.

Liability of the Servant to Third Persons.

Liability of servant for torts.—A servant is liable for misfeasance, but not for nonfeasance, omission or negligence in the performance of his duties. This was laid down by Chief Justice *Holt* as far back as 1701, in the case of *Lane* v. *Cotton* (*o*), when he said: "A servant or deputy *quatenus* such cannot be charged for neglect, but the principal only shall be charged for it; but for a misfeasance, an action will lie against a servant or deputy, but not *quatenus* a deputy or servant, but as a wrongdoer." This is simply in accordance with the principle that all tort-feasors are principals, and the act being done by command of his master will not avail to relieve the servant of his liability. "For the warrant of no man, not even of the King himself, can excuse the doing of an illegal act, for although the commanders are trespassers, so also are the persons who did the fact" (*p*).

A servant is liable for *conversion*, and that even if done solely for the master's benefit (*q*). Thus, where a servant received a bill of exchange from the holder, knowing it to be in his hands for the purpose of getting it discounted, and appropriated it to the payment of a debt due from such holder to his master, the servant was held liable to the owner of the bill for such conversion (*r*). And similarly where a traveller received

(*o*) *Lane* v. *Cotton* (1701), 12 Mod. 488.

(*p*) *Sands* v. *Child* (1693), 3 Levinz, 352; *Merryweather* v. *Nixon* (1799), 8 T. R. 186.

(*q*) *Carey* v. *Webster* (1716), 1 Stra. 480; *Greenway* v. *Fisher* (1824), 1 C. & P. 190.

(*r*) *Cranch* v. *White* (1835), 1 Scott, 314; 1 Bing. N. C. 414.

goods from a person who had committed an act of bankruptcy, and sold them for the benefit of his master (*s*). And if a servant is guilty of a conversion, it is no answer that he acted under the authority of his master, even though the servant act under an unavoidable ignorance and for his master's benefit (*t*). But a servant will not be liable for intermeddling with another's goods by his master's orders, if it does not amount to a conversion, but only to a refusal to give up the goods to their proper owner until his master has been consulted (*u*).

A parcel was given to a waggoner for him to carry for his own gain, and not for the profit of his master. The waggoner, and not his master, was held liable for the loss of the parcel (*x*).

If a servant wantonly do an injury, though at the time actually engaged in his master's service, he will be liable. A coachman wilfully drove his master's carriage against and injured a chaise belonging to another person. The master was held not responsible, but the servant liable (*y*).

Fraud.—If a servant knowingly commit a fraud, although whilst on his master's business, or even authorized by his master to commit it, he will be liable. If the fraud is committed by his master's orders, both master and servant will be liable. As Lord *Westbury* said in *Cullen* v. *Thompson* (*z*): "A servant who joins with and assists his master in the commission of a fraud, is civilly responsible for the consequences, though his concurrence is unknown to the party injured, for all

(*s*) *Perkins* v. *Smith* (1752), Sayer, 40.
(*t*) *Stephens* v. *Elwall* (1815), 4 M. & S. 259.
(*u*) *Mires* v. *Solebay* (1678), 2 Mod. 242; *Alexander* v. *Southey* (1821), 5 B. & Ald. 247; *Lee* v. *Bayes* (1856), 18 C. B. 607.
(*x*) *Butler* v. *Basing* (1827), 2 C. & P. 613.
(*y*) *McManus* v. *Crickett* (1800), 1 East, 106.
(*z*) *Cullen* v. *Thompson* (1862), 6 L. T. (N.S.) 870.

directly concerned in the commission of fraud are principals . . . for the contract of service cannot impose any obligation on the servant to commit or assist in committing a fraud."

Public officials.—Although, as previously explained(*a*), *superior public officers* are not liable for the acts of the inferior officers under them, these latter are themselves liable. For example, although, as decided in *Lane* v. *Cotton* (*b*), the Postmaster-General is not liable for letters which may be stolen, yet deputy-postmasters have been held liable (*c*).

Subsidiary officials have in several instances been also held liable, *e.g.*, returning officers (*d*), overseers (*e*), and customs collectors (*f*).

Liability of servant for contracts.—As we have previously seen, when a servant is acting within the scope of his employment, and with the authority, express or implied, of his master, he is not liable for the contracts on which he enters, but the responsibility rests upon the master—*respondeat superior*.

If, however, the servant fraudulently represents his authority with intention to deceive; or has no authority, and knows it, yet, nevertheless, makes the contract professing to have such authority, in other words, makes a statement he knows to be false; or whilst *bonâ fide* believing that such authority is invested in him, yet has, in fact, no such authority, in other words stating as true what he did not know to be true, omitting at the same time to give such information to the other contracting party as would enable him equally

(*a*) *Vide* Chap. VIII., p. 97.
(*b*) *Lane* v. *Cotton* (1701), 12 Mod. 488.
(*c*) *Stock* v. *Harris* (1771), 5 Burr. 2709; *Barnes* v. *Foley* (1768), 5 Burr, 2711.
(*d*) *Ashby* v. *White* (1703), 1 Salk. 19; 1 Sm. L. C. 227.
(*e*) *Perring* v. *Harris* (1836), 2 Moo. & Rob. 5.
(*f*) *Barry* v. *Arnaud* (1839), 10 A. & E. 646.

with himself to judge as to the authority under which he proposed to act—in all these cases the servant will himself be liable (*g*).

The servant may also be liable if he contract in his own name, unless he add after *per pro.*, *i.e.*, *per procuration*, signifying that he is signing in reality on another's behalf. In fact, to support an action against a servant to recover back the money received by him as money had and received by him to the use of the plaintiff, a receipt signed by the servant "for" his master will not be sufficient, such a receipt being only evidence of a payment to his master by the hands of his servant (*h*). Therefore, where money was received by a clerk to an attorney, who was authorized to receive it for his client, the clerk signing the receipt for the attorney, it was held that there was no privity between the clerk and the client; that the money was received by the clerk as the agent of the attorney, to whom alone he was accountable, and who was answerable on the other hand to his client; and that an action, therefore, would not lie against the clerk (who did not account for the money on his master becoming bankrupt) at the suit of the client for money had and received to his use (*i*).

Neither will an action lie against a servant at the suit of a creditor for money placed in his hands by his master for the purpose of being paid over to such creditor, but withheld, as the money was only received in his capacity of servant, and there was no act on his part of appropriation of the money to the use of the creditor (*k*).

If a servant, having received money for his master, has paid it over to his master, he is freed from liability, however great a mistake may have been made in so

(*g*) *Smout* v. *Ilbury* (1842), 12 L. J. Ex, 357; 10 M. & W. 1; *per* ALDERSON, B.

(*h*) *Edden* v. *Read* (1813), 3 Camp. 339.

(*i*) *Stephens* v. *Badcock* (1832), 3 B. & Ad. 354.

(*k*) *Howell* v. *Batt* (1833), 2 Nev. & Man. 381.

paying the money to the servant in the first instance (*l*). But if money be paid by mistake to a servant, and placed by him to the account of his master, but not paid over, the servant will be liable to the person so paying it by mistake. The mere paying of such money into account without any new credit being taken, fresh bills accepted, or further sum advanced for the master in consequence of it, is not equivalent to the payment of it over (*m*).

If money has come into the servant's hands through some wrongful act on his part, he cannot divest himself of liability by paying the money over to his master (*n*). And to make it a defence for a servant that he has paid over the money, it is necessary that it should have been paid to him expressly for the use of the person to whom he has paid it over (*o*). If money is paid to a servant, and he misapplies it, the party so paying has his remedy against either the master or the servant at his election (*p*).

If a servant is authorized to pledge his master's credit for necessaries during the absence of the latter from home, and whilst away the master dies unbeknown to the servant, and whilst thus ignorant of his master's death he continues to buy necessaries on his master's credit, such servant is not liable for the goods thus supplied. And the executors of the master cannot either be made responsible for the goods supplied on credit after his death (*q*).

(*l*) *Cary* v. *Webster* (1716), 1 Stra. 480.
(*m*) *Buller* v. *Harrison* (1771), Cowp. 565.
(*n*) *Miller* v. *Aris* (1801), 3 Esp. 231. See Lord KENYON'S judgment.
(*o*) *Snowdon* v. *Davis* (1808), 1 Taunt. 859.
(*p*) *Cary* v. *Webster* (1716), 1 Stra. 480.
(*q*) *Blades* v. *Free* (1829), 9 B. & C. 167.

CHAPTER XII.

Criminal Liability of the Servant.

In relation to his master.—With regard to criminal acts, a servant is in exactly the same position in relation to strangers as any other individual; but in relation to his master there is this distinction, that the master, by placing property in the custody or charge of his servant, does not, as in other cases, thereby part with the legal, but only with the actual possession thereof; and therefore the wrongfully making away with any part of such property by the servant will amount to a larceny, whereas if done by a person not standing in that relation, as, for example, an ordinary bailee, the same act might only be a breach of trust.

Murder.—By the common law murder of a master by his servant was formerly an aggravated form of that crime, in fact was *petit treason*, but this is now no longer the case (*r*).

Burglary.—A servant may be guilty of burglary although living in his master's house. A servant opened the door of a room within the house with the intention of committing a felony. *King*, C.J., ruled that it was a burglary, and the servant was convicted and transported (*s*). A servant who opened the front door and let a man in who stole the plate in a side-board, the position of which was pointed out by him, was held guilty of burglary by all the judges and was executed (*t*).

(*r*) 9 Geo. 4, c. 31; 24 & 25 Vict. c. 100, s. 8.
(*s*) *R.* v. *Gray* (1722), 1 Stra. 485.
(*t*) *Cornwall's case* (1731), 2 Stra. 881.

Larceny.—At common law larceny is the wrongful taking and carrying away of the personal goods of anyone from his actual or constructive possession, with a felonious intent to convert them to the use of the offender, without the consent of the owner. The possession is constructive where the goods are placed by the owner under the care of another, or where he has become entitled to them by contract, but has not yet reduced them into actual possession. There is also another species of property in goods which the law recognizes, so as to make the felonious taking of the same a larceny from the possessor, viz., where they are in the possession of a person who has acquired an interest therein by contract either by way of loan, pledge, hiring, or the like. A distinction was very early taken between a possession and a charge, the former, as when goods are delivered to a stranger for a particular purpose, being considered to invest such person, termed the bailee, with a qualified property in those goods; the latter, as when goods are in the custody or under the care of servants, being considered not even to invest the servant with the possession, but to leave the entire possession, as well as property, in the master. If the servant, therefore, feloniously makes away with any of them he would be guilty of larceny.

The following are a few examples of acts by servants which have been held to be larceny:—A carter going away with his master's cart (*u*); a servant entrusted with money to get changed or deposited with a banker, and applying it to his own use (*x*); the manager of a branch bank after putting money received in the safe appropriating it to his own use (*y*); a banker's clerk taking notes from the till under pretence of paying a

(*u*) *R.* v. *Robinson* (1755), 2 East P. C. 565.
(*x*) 1 Leach, 102; 2 Leach, 870, 943.
(*y*) *Reg.* v. *Wright* (1888), 27 L. J. M. C. 65.

cheque from a third person, which cheque he obtained by having entered in the books a fictitious balance in favour of that person (*z*); a banker's clerk sent into the money room to bring up a sum of cash, taking the opportunity to secrete some for his own use (*a*); a tradesman's porter sent with a parcel to deliver it to a customer opened it and took out some of the contents, which he sold, and pocketed the money (*b*); a clerk not residing in the house received from his master a bill of exchange in the usual course of business, with directions to transmit it by post to a correspondent: instead of so doing he obtained cash for it, which he appropriated to his own use (*c*); and a clerk who managed his employer's financial business took an unindorsed bill, got it discounted, and absconded with the money, was held guilty of larceny, notwithstanding the objection that by the course of business he had a right to get the money for the bill, and therefore could not legally be indicted for stealing the bill itself (*d*).

In these cases the property was in the actual possession of the master at the time of the taking by the servant, but if the possession by the master had been a legal or constructive one only it would have been equally larceny, *e.g.*, a cornfactor having purchased a load of oats on board a ship sent his servant with a barge to receive part of the oats in bulk: the servant ordered some of them to be put into sacks, which he afterwards appropriated (*e*). And again, where property which the master had bought was weighed out in the presence of his clerk and delivered to his carter's servant to cart, who allowed other persons to take away the cart and

(*z*) *R.* v. *Hammon* (1812), 4 Taunt. 304.
(*a*) *R.* v. *Murray* (1784), 1 Leach, 344.
(*b*) *R.* v. *Bass* (1782), 1 Leach, 251.
(*c*) *R.* v. *Paradice* (1766), 2 East P. C. 565.
(*d*) *Chipchase's case* (1795), 2 East P. C. 567.
(*e*) *R.* v. *Spears* (1798), 2 East P. C. 56

dispose of the property for their mutual benefit, it was held that the carter's servant was not guilty of a mere breach of trust, but that he, as well as the others, was guilty of larceny (*f*).

It was not, however, larceny at common law if a servant appropriated goods coming into his hands for the use of his employer, of which the master had had neither actual nor legal possession. Therefore a shopman who received money from a customer and secreted it instead of putting it into the till (*g*), a banker's clerk who appropriated money received at the counter instead of putting it into the proper drawer (*h*), were both held not guilty of larceny. But if the money had been put into the till or drawer, the subsequent taking would have been felonious. Also a servant sent to get change for a note and then making off with the money was not guilty of larceny at common law (*i*). And a clerk sent to pay for an advertisement for which he had received 5*l*., paid 6*s*., and charged his master 2*l*. 10*s*. 6*d*., pocketing the difference, was released after being charged with embezzlement, after the case had been considered by twelve judges (*k*). And until a special Act (*l*) was passed to meet such cases, a servant was liable to be found guilty of larceny for taking the property of his master though not for his own, but rather for his master's advantage. For example, a servant who clandestinely took his master's corn, though to give to his master's horses, was convicted of larceny (*m*). By the statute just mentioned this is no longer a felony, but is punishable on summary conviction before two justices.

(*f*) *R.* v. *Harding* (1807), Russ. & Ry. 125.
(*g*) *R.* v. *Bull* (1797), 2 Leach, 841.
(*h*) *R.* v. *Bazeley* (1799), 2 East P. C. 571 ; 2 Leach, 835.
(*i*) *R.* v. *Sullens* (1826), 1 Moo. C. C. 129.
(*k*) *R.* v. *Murray* (1830), 5 C. & P. 146 n.
(*l*) 26 & 27 Vict. c. 103, s. 1 [1863].
(*m*) *R.* v. *Morfit* (1816), R. & R. C. C. 307.

Embezzlement—Larceny Act, 1861.—To prevent the miscarriage of justice, such as arose in the cases just referred to, more especially *R.* v. *Bazeley* (*n*), the *Embezzlement Act* (*o*) was passed. This statute was repealed by the Statute Law Revision Act of 1861 (*p*), and the law regarding larceny and embezzlement by servants laid down in the *Larceny Act*, 1861 (*q*). *Section 57* of that statute enacts that "Whosoever being a clerk or servant, or being employed for the purpose or in the capacity of clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession of or power of his master or employer, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping." And by *section 68*, "Whosoever being a clerk or servant, or being employed for the purpose, or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security, which shall be delivered to or received or taken in possession by him for or in the name, or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed, and being convicted thereof shall be liable at the

(*n*) *R.* v. *Bazeley* (1799), 2 Leach, 835.
(*o*) 39 Geo. 3, c. 85.
(*p*) 24 & 25 Vict. c. 95.
(*q*) 24 & 25 Vict. c. 96, re-enacting 14 & 15 Vict. c. 100, s. 13.

discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping."

Definition of Embezzlement.—There are three conditions, therefore, necessary to make the offence of embezzlement (*r*) :—

1. The offender must be a clerk or servant, or employed in the capacity of a clerk or servant.
2. He must receive or take into his possession some chattel, money, or valuable security for or on account of his master (*s*).
3. He must fraudulently embezzle the same.

By *section 72* of the Larceny Act, a person indicted for embezzlement is not to be acquitted if the offence turn out to be larceny and *vice versâ*. But if he being indicted for stealing were convicted of larceny on evidence showing him guilty of embezzlement he will escape, though on the same evidence on the same indictment he might have been convicted of embezzlement (*t*).

Section 78 enacts that clerks wilfully assisting factors in obtaining illegally advances on the property of their principals, are guilty of a misdemeanor, and being convicted thereof, shall be liable to the same punishment.

By *Russell Gurney's Act* (*u*), 18 & 19 Vict. c. 126 (*x*) was extended to embezzlement by clerks or servants.

The persons intended to be reached by the Larceny Act are those filling the ordinary situation of clerks or

(*r*) See Lord ELLENBOROUGH'S judgment in *R.* v. *Johnson* (1815), 3 M. & S. 548.

(*s*) *Reg.* v. *Thorpe* (1858), 27 L. J. M. C. 264.

(*t*) *Reg.* v. *Gorbitt* (1857), 26 L. J. M. C. 49.

(*u*) 31 & 32 Vict. c. 116, s. 2.

(*x*) Repealed and replaced by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

servants, and having masters to whom they are accountable for the discharge of the duties of their situation (*y*). The article embezzled need not now, however, be received by the servant *in virtue of his employment*, those words having been designedly omitted from the Act of 1861. Therefore the absence of authority to receive money or other valuables will not, as formerly, prevent a conviction being obtained (*z*).

The Act includes female servants (*a*), apprentices (*b*), and travellers (*c*).

Neither the nature of the wages nor the duration of the employment is material, but the relation of master and servant must exist (*d*). Hence difficulties sometimes arise in deciding whether a person can really be considered the servant of him by whom he is employed. The following cases illustrate this point :—

A man hired by a market gardener to do a day's work, who was requested by his employer to take some vegetables to market and sell them and bring back the produce, was held to be a servant (*e*). A superintendent of police appointed under statute (*f*) by a chief constable is the servant of the chief constable, and may be convicted of embezzlement (*g*). But a person intrusted with goods for sale and paid by a commission upon the amount received, is not a clerk or servant within the statute (*h*). And a person employed by an overseer to

(*y*) Bayley, J., in *Williams* v. *Stott* (1833), 1 Cr. & M. 685.
(*z*) *R.* v. *Hawtin* (1836), 7 C. & P. 281 ; *R.* v. *Mellish* (1805), R. & R. C. C. 80; *R.* v. *Snowly* (1830), 4 C. & P. 390.
(*a*) *R.* v. *Smith* (1823), R. & R. 267.
(*b*) *R.* v. *Mellish* (1805), R. & R. 80.
(*c*) *R.* v. *Carr* (1811), R. & R. 198.
(*d*) *R.* v. *Mellish* (1805), R. & R. 80 ; *R.* v. *Beechey* (1817), R. & R. 319.
(*e*) *R.* v. *Spencer* (1815), R. & R. 299.
(*f*) 2 & 3 Vict. c. 93.
(*g*) *Reg.* v. *Baxter* (1851), 5 Cox C. C. 302.
(*h*) *Reg.* v. *Miller* (1850), 4 Cox, 166 ; and see *R.* v. *Murphy*, 4 Cox, 101.

collect the poor rate and keep the books has also been held not to be a clerk or servant within the Act, and to have been improperly convicted of embezzlement (*i*).

The clerks or servants of *corporations* are within the Act (*j*), and it is not requisite that a person employed as the clerk of the corporation should have been appointed under the common seal (*k*).

A servant in the employment of two *partners* is the servant of each; and if he embezzle the private money of one, he may be indicted as that partner's servant (*l*). And a traveller employed by several houses upon commission to collect debts was held to be the servant of each (*m*).

Since the money or other valuables must be received, "for or on account of his master," money received from the master himself, or constructively from the master by the hands of another clerk (*n*), has been held not embezzlement but larceny.

It is not necessary to support the charge of embezzlement that the actual money received should be appropriated by the offender. For instance, after some uncertainty it was decided by a majority of judges that an indictment could be sustained against a clerk for embezzlement of the difference between the sum actually received by him and that entered in his book, when the identical bank notes received by him had been actually paid over to his employer upon that and other accounts (*o*).

It is an indictable offence to incite and solicit a servant to rob his master, though the servant does not

(*i*) *Reg.* v. *Harris* (1893), 69 L. T. 25; 57 J. P. 729.
(*j*) *Williams* v. *Stott* (1833), 1 Cr. & M. 685.
(*k*) *R.* v. *Wallings* (1824), 1 C. & P. 457.
(*l*) *R.* v. *Leach* (1821), 3 Stark. 70.
(*m*) *R.* v. *Carr* (1811), R. & R. 198.
(*n*) *R.* v. *Murray* (1830), R. & M. C. C. 276; 5 C. & P. 146.
(*o*) *R.* v. *Hall* (1821), 3 Stark. 67; *R.* v. *Tyree* (1869), 38 L. J. M. C. 58; 19 L. T. 657; 1 C. C. R. 177; 17 W. R. 334.

steal anything, and no act be done, except the inciting and soliciting (*p*).

A master has no right to open or search the property of his servant. If he suspects his servant of being a thief, and of having secreted the stolen article in his box or other property, the proper course for him to pursue is to apply for a search warrant, or at least call in a constable (*q*).

(*p*) *R.* v. *Higgins* (1801), 2 East, 5.
(*q*) *Brown* v. *Chapman* (1848), 6 C. B. 365; *Davis* v. *Russell* (1829), 5 Bing. 354.

CHAPTER XIII.

Character.

General statement of the law.—A master is not obliged to give his servant a character. If he does give a character it is between master and master a privileged communication unless there is express proof of malice.

To make a *primâ facie* case of malice the circumstances must be more than consistent with a malicious purpose on the master's part, they must point in some slight degree at least to malice, or the judge will not allow the case to go to the jury, but will rule that it is a privileged communication, and enter a non-suit; but if there is a *primâ facie* case of malice, it is for the jury to decide whether the master was actuated by malice or not.

To enable a servant to maintain an action he must allege and prove either

(1.) Special damage, *i.e.*, some definite injury resulting from what the master has said, or,

(2.) The words used must be actionable in themselves.

We may now consider the decisions which support these propositions.

Master not bound to give a character.—In the absence of an agreement a master is under no legal obligation to give his servant a character, however great the moral obligation may be to do so. This has been always recognized since Lord *Kenyon's* decision in *Carol* v. *Bird* (*r*), when he said, "By some old statutes regulations were established regulating the characters

(*r*) *Carol* v. *Bird* (1800), 3 Esp. 202.

of labourers, but that in the case of domestic and menial servants there was no law to compel the master to give the servant a character; for, it might be a duty which his feelings might prompt him to perform, but there was no law to enforce the doing of it." The reason for this rule is to be found in the consideration that if a master were compelled to give a character, it would necessarily follow that he must be held to the proof of the character he gives. The burden then cast on the master would often give rise either to much litigation on the one hand or to the giving of false characters on the other.

Character given a privileged communication unless malicious.—The law, regarding malice or ill-will as the only reason a master can have for giving his servant a false character, has laid down that no action will lie against a master for giving (in answer to inquiries on the subject) an unfavourable, or even false character of his servant, if done *bonâ fide* and without malice, for it is a privileged communication. This is well illustrated in an old case (*s*) tried before Lord *Mansfield*, where A., a servant, brought an action against her former mistress for saying to a lady who came to inquire for her character, that she was saucy and impertinent and often lay out of her bed at night, but was a clean girl, and could do her work well. Though A. proved that she was by this means prevented from getting a place, yet she was unsuccessful, Lord *Mansfield* saying, "This is not to be considered as an action in the common way of defamation by words, but that the gist of it must be *malice*, which is not implied from the occasion of speaking, but should be directly proved. That it was a confidential declaration and ought not to have been disclosed." And two years after it was laid

(*s*) *Edmondson* v. *Stevenson* (1766), Bull. N. P. 8.

down in another case (*t*) that where a person intending to hire a servant, applies to the former master for his character, the master (except express malice is proved) shall not be obliged to prove the truth of the character he gives, for in such case the disclosure is not made officially, but in confidence, and the facts may happen to rest only in the knowledge of the master and servant, and the same judge said it was so settled, and that he had frequently ruled it so at *nisi prius*. And again a few years later it was decided that a servant cannot maintain an action against his former master for words spoken, or a letter written, in giving a character of the servant, unless the servant prove the *malice* as well as the falsehood of the charge, even though the master make specific charges of fraud (*u*). In this case the letter was written to the plaintiff's brother-in-law in reply to an application from him. The court held that an action would not lie, and *Buller*, J. added "This is an exception to the general rule (in regard to libels) on account of the occasion of writing the letter. Then it is incumbent on the plaintiff to prove the falsehood of it. And in actions of this kind, unless he can prove the words to be *malicious*, as well as *false*, they are not actionable. On this case, it evidently appears that the defendant has been entrapped, because the letter was written on the application of the plaintiff's brother-in-law." In a similar case (*x*) it was held that where a written character has been procured by means of a letter, written ostensibly with a view to inquire the servant's character, but in reality to entrap the master into a libellous answer, which might be used as the foundation of an action for libel, an action cannot be maintained.

(*t*) *Lowry* v. *Akenhead* (1768), Bull. N. P. 8. See also *Hargrave* v. *Le Breton*, 4 Bur. 2425.

(*u*) *Weatherston* v. *Hawkins* (1786), 1 T. R. 110; *Sims* v. *Kinder* (1824), 1 C. & P. 279.

(*x*) *King* v. *Waring* (1803), 5 Esp. 13.

A direct accusation of thieving in the presence of other persons has been held a privileged communication. For instance, a servant had left his master's house, having been dismissed on a charge of theft, and was afterwards discovered by the master in communication with the other servants, whereupon the master addressing his servants, said, "I have dismissed that man for robbing me, do not speak to him any more in public or private, or I shall think you as bad as he" (*y*). And again (*a*), a master having refused to give his shopman a character was applied to by the brother of the servant for his reason, when he said, "I believe he has robbed me for years, and I can prove it by the circumstances under which he was discharged." That was held a privileged communication, although the servant had been dismissed upon a charge of one theft only.

When the question of malice may be submitted to the jury.—Before the question of malice can be submitted to the jury the evidence must raise a probability of *malice* and *be more consistent with its existence than its non-existence* (*y*). If therefore, the occasion upon which the words are spoken is such as to repel the presumption of malice the communication is *primâ facie* privileged, and it lies upon the plaintiff to show by evidence that the defendant was influenced by actual malice. If he fails to do so, the judge at the trial ought not to leave the question to the jury, but to direct a verdict for the defendant. In the words of *Denman*, C.J., in *Kelly* v. *Partington* (*b*), "Where it is clear that the words complained of are nothing more than a communication from one master to another informing him of the character of a servant, the case

(*y*) *Somerville* v. *Hawkins* (1851), 20 L. J. C. P. 133; 10 C. B. 583; 15 Jur. 450.
(*a*) *Taylor* v. *Hawkins* (1851), 20 L. J. Q. B. 313; 16 Q. B. 308; 15 Jur. 746.
(*b*) *Kelly* v. *Partington* (1833), 4 B. & Ad. 700.

certainly ought not to go to a jury. But where there are *other circumstances* from which malice may be inferred, the question is for them to decide." In this case a shopwoman was charged by her master of theft to a person who inquired her character. The charge was repeated to a relative of the discharged servant, who called to ask for an explanation and to clear up the accusation by reference to a wage book kept by the master. The relative's explanations were met with a contemptuous grin and a refusal to show the book. The court decided that there was evidence of malice and refused a non-suit.

Circumstances from which a jury might infer malice, and lead them to give a verdict for the servant against the master, are well illustrated by the case of *Rogers* v. *Clifton* (*c*), where the master having refused a month's wages in lieu of warning, turned his servant out of the house, and then officiously stated his misconduct to a former master in order to prevent him giving a second character, and then himself, on being applied to, gave the servant a bad character, the truth of which he was unable to prove when challenged by the servant, who brought evidence in support of his contention that no such charges as those contained in the master's statement were ever brought against him whilst in his service. And again, where a master without being applied to, in order to prevent the servant from obtaining a situation, volunteered to give information regarding his character, afterwards wrote a second letter containing libellous reflections on the servant, which he was unable to prove, the jury found for the servant (*d*). An application was made for a new trial, but the court unanimously refused to grant it. The

(*c*) *Rogers* v. *Clifton* (1803) 3 B. & P. 587.

(*d*) *Pattison* v. *Jones* (1828), 8 B. & C. 578; *Fryer* v. *Kinnersley* (1884), 33 L. J. C. P. 98; 15 C. B. (N.S.) 422; 9 L. T. 415; 12 W. R. 155; 10 Jur. (N.S.) 441.

remarks of *Bayley*, J. in his judgment so clearly explain the law that they are worth quoting at some length :— "Generally speaking, anything said or written by a master when he gives the character of a servant is a privileged communication. If a servant therefore charge a master with publishing a libel, it is competent to the latter, to prove that the alleged libel was written under such circumstances as to make it a privileged communication, and thereby throw on the plaintiff the necessity of showing that it does not come within that protection which the law gives to a privileged communication. But if the supposed libel be not communicated *bonâ fide*, it does not fall within the protection which the law extends to privileged communications. Here the second letter of the defendant was written in answer to one calling upon him to give an account of the plaintiff's conduct, but the defendant wrote his first letter without being called upon to do so. I do not mean to say that in order to make libellous matter written by a master privileged, it is essential that the party who makes the communication should be put in action in consequence of a third party putting questions to him. I am of opinion that he may, when he thinks another is about to be taken into his service, one whom he knows ought not to be taken, set himself in motion, and do some act to induce that other to put questions to and seek information from him. The answers to such questions given *bonâ fide*, with the intention of communicating such facts as the other party ought to know, will, although they contain slanderous matter, come within the scope of a privileged communication, but in such a case it will be a question for a jury, whether the defendant has acted *bonâ fide*, intending honestly to discharge a duty; or whether he acted maliciously, intending to do an injury to the servant. In forming their judgment, the jury were bound to take

into their consideration the fact of the defendant voluntarily putting himself into motion, and thereby in effect having by the first letter desired questions to be put to him. These questions were put and gave occasion to the second letter. The question for the jury to consider was whether the defendant acted honestly and *bonâ fide* in making the representation contained in that letter. The jury had that question submitted to their consideration, and they were of opinion that the communication was not made *bonâ fide*, but that it was made with the intention to injure the plaintiff, and if it was made with that intention, it was not a privileged communication," and *Littledale*, J. added, " Upon the question, whether a master who has written a libel inquiring the character of a servant has acted *bonâ fide*, or not, it may make a very material difference, whether he volunteered to give the character, or had been called upon to do so. At all events when he volunteers to give the character stronger evidence will be required that he acted *bonâ fide* than in the case where he has given the character after being required to do so."

In another case (*e*) a governess brought an action against her late employer for giving a false character to a lady who was about to engage her. The plaintiff adduced evidence to contradict the statements made by the defendant, who produced no evidence in support of her account of the dismissal. Lord *Denman* left it to the jury to say whether, considering the whole case, the defendant had knowingly made false statements concerning the plaintiff and therefore had been guilty of malice. The jury found a verdict for the plaintiff, and subsequently an application for a new trial was refused.

In a curious case (*f*) a rector issued a pastoral letter containing grave reflections on the character of a

(*e*) *Fountain* v. *Boodle* (1842), 3 Q. B. 5 ; 2 G. & D. 455.
(*f*) *Gilpin* v. *Fowler* (1854), 23 L. J. Ex. 152 ; 9 Ex. 615 ; 18 Jur. 292.

schoolmaster he had discharged and urging parents in the most solemn manner not to send their children to a school he had set up. The court held that this letter was not a privileged communication, and that the circumstances were such that the question of malice should be submitted to a jury.

Summary.—To sum up then, malice will be inferred and the master will be responsible in an action of damages for the same where the injurious statement has been made under circumstances tending to show that the master was actuated, not by an anxiety faithfully and truly to reply to the inquiries made by the proposed new master, or to put him on his guard against some evil disposed person, but by a desire to injure the servant; as if the master officiously state to a former master any trivial misconduct of the servant in order to prevent his giving a second character, and on being himself applied to, give the servant a bad character which is proved to be false (*g*); or if the master, without being applied to, in order to prevent the servant from obtaining a situation volunteer to give an unfavourable character the truth of which he is unable to prove (*h*); or where in answer to inquiries the charges of misconduct have been coupled with expressions of vindictiveness, and there is no proof of the truth of the imputations (*i*); or when statements are made regarding the character of the servant to a person wishing to engage her are not only unsupported by evidence but are also contrary to what is proved to have actually occurred (*k*).

Communication of second-hand knowledge may be privileged.—A master may be justified in answer to

(*g*) *Rogers* v. *Clifton* (1803), 3 B. & P. 587.
(*h*) *Pattison* v. *Jones* (1828), 18 B. & C. 578.
(*i*) *Kelly* v. *Partington* (1833), 4 B. & Ad. 780.
(*k*) *Fountain* v. *Boodle* (1842), 3 Q. B. 5.

inquiries regarding the character of his servant in stating not only what he knows of his own personal experience and observation, but also with the knowledge of which have been communicated to him and which he believes to be true, and in justice to the applicant ought to be made known to him. This was decided in an important case (*l*), which is worth some little attention, for it *shows how wide a privileged communication may extend in matters of this kind*, and *how rigorous the court is disposed to be in requiring express proof of malice*, and how little ready it is to infer malice if the facts are capable of explanation on the assumption of its absence. The facts of the case were as follows:—The defendant's wife in answer to inquiries respecting her servant's (the plaintiff) character wrote—"Mrs. Affleck's compliments to Mrs. S., and is sorry that in reply to her inquiries respecting E. Child, nothing can in justice be said in her favour. She lived with Mrs. A. but for a few weeks, in which time she frequently conducted herself disgracefully; and Mrs. A. is concerned to add she has since her dismissal been credibly informed she has been and is now a prostitute at Bury." Mrs. Affleck afterwards went to persons who had recommended the plaintiff to her, and made a similar statement to them. The plaintiff having been nonsuited by Lord *Tenterden*, he being of opinion that the latter part of the letter was privileged, and that the other communications being made to persons who had recommended the plaintiff, were not evidence of malice, and a new trial being moved for the court unanimously refused it, two judges (*Bayley* and *Littledale*, JJ.) instead of regarding the latter part of the letter as indicative of malice, going so far as to say that Mrs. Affleck would not have done her duty had she withheld the information. *Parke*, J., in his judgment, said

(*l*) *Child* v. *Affleck et Ux* (1829), 9 B. & C. 403; 4 M. & Ry. 388.

"The rule laid down by Lord *Mansfield* in *Edmondson* v. *Stevenson* (*m*), has been followed ever since. It is that in actions for defamation in giving a character of a servant, the gist of it must be malice, which is not implied from the occasion of speaking, but *should be directly proved*. The question then is whether the plaintiff in the case adduced evidence, which if laid before a jury, could properly lead them to find express malice. That does not appear upon the face of the letter. *Primâ facie* it is fair, and undoubtedly a person asked as to the character of a servant may communicate all that is stated in that letter. Independently of the letter there was no evidence except of the two persons who had recommended the plaintiff. The communication to them therefore was not officious, and Mrs. Affleck was justified in making it. In *Rogers* v. *Clifton* (*n*) evidence of the good conduct of the servant was given, and the communication also appeared to be officious. Here the letter was undoubtedly *primâ facie* privileged, the plaintiff, therefore, was bound to prove *express malice*, in order to take away the privilege."

The fact of a master having given a servant a good character does not preclude the communication of information adverse to the servant which comes to the knowledge of the master *subsequently*. This is well illustrated by the case of *Gardner* v. *Slade and Wife* (*o*). The facts were as follows:—A domestic servant about to enter the service of A., referred A. for her character to the defendant, her former mistress, who, being unwell at the time, her husband answered the inquiries of A., and gave the plaintiff a good character, and, in consequence, A. took the plaintiff into her service.

(*m*) *Edmondson* v. *Stevenson* (1766), Bull. N. P. 8.
(*n*) *Rogers* v. *Clifton* (1803), 3 B. & P. 587.
(*o*) *Gardner* v. *Slade and Wife* (1849), 13 Q.B. 796, 18 L.J.Q.B. 334; *Cf. Harris* v. *Thompson* (1853), 13 C. B. 333.

The defendant, on her recovery, wrote to A. on other matters, and in her letter said she had lately been imposed on in her kitchen. This letter occasioned further inquiries to be made by A. of the defendant as to the plaintiff's character, and the defendant in answer to these inquiries spoke the words complained of, viz., that she suspected the plaintiff of dishonesty. It was held that the defendant was bound to correct any error as to the plaintiff's character into which she supposed A. to have been led by the answer to her first inquiries; that the words were spoken under such circumstances as *primâ facie* to be privileged. It was also held that the fact that the defendant alluded to the plaintiff and induced further inquiries about her were not evidence of malice.

A master having dismissed two servants for theft told each of them that he was dismissed because with the other he had robbed him. The master was held not to have spoken maliciously (*p*).

Statements to third parties.—Words addressed to a servant impugning his character, although uttered in the presence of a third person, may, nevertheless, be a privileged communication. This is illustrated by the case of *Toogood* v. *Spyring* (*q*), which also presents side by side communications some of which were held to be privileged and others not privileged. A tenant of a farm, A., had some repairs done by C. at the instance of B., the landlord's agent. The work was badly done, and A. accused C. in the presence of a third party, D., of drunkenness and dishonesty, and also complained to B. These communications of A. were held to be privileged. Afterwards A., in the absence of C., told D. that he was certain C. had broken into his cellar. This statement was, on the contrary, not privileged.

(*p*) *Manby* v. *Witt* (1886), 25 L.J.C.P. 294; 18 C.B. 544; 2 Jur. (N.S.) 1004.
(*q*) *Toogood* v. *Spyring* (1834), 1 C. M. & R. 193; 3 L. J. Ex. 347.

No action is maintainable for words spoken to a *policeman* on giving a servant in charge, or when preferring a complaint before a magistrate (*r*).

Statements by third parties regarding a servant's character may be privileged, *e.g.*, a tenant wrote to his landlord making serious accusations against a man who was applying to be made his gamekeeper: the letter was privileged (*s*). The mate of a ship wrote to a friend reflecting on his captain's conduct. This friend, notwithstanding the mate's request that he would not do so, showed the letter to the owner of the ship and the captain was in consequence dismissed. Thereupon the captain brought an action against the friend of the mate, who was unable to justify the statements contained in the letter. The jury found for the defendant, and on appeal the court was equally divided as to whether it was a privileged communication. The defendant here had no personal interest in the subject matter of the libel, and therefore, did not come under the rule laid down in the well-known case of *Harrison* v. *Bush* (*t*). An elector wrote to Lord Palmerston, the then Home Secretary, seriously impugning the conduct of a local magistrate during the election. The magistrate failed in an action for libel which he brought against the elector because his letter, being written with a good intent and in discharge of what he believed to be a public duty, was held to be privileged. During the trial counsel propounded a legal canon which was adopted by the court through Lord *Campbell*, C.J., to the effect that "a communication made *bonâ fide* on any subject matter in which the party communicating it has an interest, or in reference to which he has a duty, is

(*r*) *Johnson* v. *Evans* (1800), 3 Esp. 32.

(*s*) *Cockayne* v. *Hodgkinson* (1833), 5 C. & P. 543. See also *Cowles* v. *Potts* (1865) 34 L. J. Q. B. 247; 11 Jur. (N.S.) 946; 13 W. R. 858.

(*t*) *Harrison* v. *Bush* (1856), 25 L. J. Q. B. 25; 5 E. & B. 344; 1 Jur. (N.S.) 846.

privileged, if made to a person having a corresponding interest or duty, although it contains criminatory matter, which without this privilege would be slanderous and actionable."

A shipping insurance society wrote to the owner of a vessel saying that if he gave the command to a particular person, whom they believed to be of drunken habits, they should refuse to continue to insure the vessel. This communication was held to be privileged. The representation made by the insurance society was clearly one made in the conduct of their own affairs and in matters in which their own interest was concerned (*u*).

Nature of malicious statement.—Assuming then that the master is animated by malice or ill-will in the statements he makes regarding his servant's character, we have next to consider what must be the nature of the words used so as to found the basis of an action. The words must either be actionable in themselves, or if not so must have caused special damage.

Special damage, *i.e.*, some actual definite injury to the servant. The courts have not been too ready to attribute the damage complained of to the words spoken, and the special damage must be shown to be the legal and natural consequence of the slander (*x*). This is often a matter of greater difficulty than might be imagined, for there may be circumstances coincident with the words spoken which might account for the damage suffered, and in such cases there has been a tendency on the part of judges to refuse to assume that the damage is the result of the slanderous statements. A girl employed in straw bonnet making who was

(*u*) *Hamon* v. *Falle* (1879), L. R. 4 App. Cas. 247 ; P. C.
(*x*) *Vicars* v. *Wilcock* (1806), 8 East 1 ; 2 Smith's L. C. 487 ; *Kelly* v. *Partington* (1833), 4 B. & Ad. 700.

dismissed by her employer as the result of reflections made upon her character by the landlord of the house in which she lodged, was successful in an action she brought against her employer for special damage she had suffered in consequence of the dismissal (*y*).

It has been held that a servant has no right of action against his master for endorsing a written character he brought with him when he entered the service (*z*). Though on the contrary a cabdriver may bring an action against his master for endorsing his licence under the statute 6 & 7 Vict. c. 86, s. 21 (*a*).

In a case (*b*) carried to the House of Lords, Lord *Wensleydale* remarked: "To make the words actionable by reason of special damage, the consequences must be such as, taking human nature as it is, with its infirmities, and having regard to the relationship of the parties concerned, might fairly and reasonably have been anticipated and feared would follow from speaking the words, not what would reasonably follow, or we think ought to follow. . . . In the case of *Vicars* v. *Wilcocks* (*c*) I must say that the rules laid down by Lord *Ellenborough* are too restricted. I cannot agree that the special damage must be the natural and legal consequence of the words, if true."

The words actionable in themselves.—If no special damage can be shown *the words must be actionable in themselves*. To be so they must impute some criminal offence, some contagious disease, dishonesty, or immorality, or make some charge affecting the servant *in his capacity of servant, i.e.*, connected with his occupation. Calling a bailiff a cozening knave (*d*), accusing a ship-

(*y*) *Knight* v. *Gibbs* (1834), 1 A. & E. 43.
(*z*) *Taylor* v. *Rowan* (1835), 1 M. & R. 490; 7 C. & P. 70.
(*a*) *Hurrell* v. *Ellis* (1845), 2 C. B. 295.
(*b*) *Lynch* v. *Knight* (1861), 9 Ho. L. C. 577.
(*c*) *Vicars* v. *Wilcocks* (1806), 8 East, 1; 2 Smith's L. C. 487.
(*d*) *Seaman* v. *Bigg* (1638), Cro. Car. 480.

master of being drunk when in charge of his ship (*e*), saying that a gamekeeper killed foxes (*f*), are instances of words which have been held *per se* actionable.

Giving a false character.—If a master recommend a servant to another employer by giving him a false character, and that employer suffer damage in consequence, he may recover his damage from the former master (*g*), and this although the recommendation is given without malice or from pecuniary interest (*h*).

A schoolmaster who for the purpose of obtaining a situation uttered a forged testimonial as to character, knowingly and with intent to deceive, was convicted of a misdemeanor at common law (*i*). And a policeman was found guilty of forgery at common law for forging and uttering to the chief constable, who had the power of appointment to the situation, letters containing a false account of himself and recommending himself as a person of upright character with a view to getting the situation of police constable (*k*).

In an action by a governess for breach of an agreement in writing, in which she was described as "M. K., spinster," and by which the defendant undertook that she should be employed for a term of three years, it was pleaded that the plaintiff intending to induce the defendant to enter into the contract, concealed from him a fact material to her qualifications as such governess, and material to be known by the defendant in engaging her as such governess, viz., that she had previously been married, and that the marriage had been dissolved by decree of the Divorce Court. It was

(*e*) *Irwin* v. *Brandwood* (1864), 33 L. J. Ex. 257 ; 2 H. & C. 960.
(*f*) *Foulger* v. *Newcomb* (1867) 36 L. J. Ex. 169.
(*g*) *Wilkin* v. *Read* (1854), 15 C. B. 192 ; 23 L. J. C. P. 193.
(*h*) *Foster* v. *Charles* (1830), 6 Bing. 396 ; 7 Bing. 105 ; 4 M. & P. 741.
(*i*) *Reg.* v. *Sharman* (1854), 23 L. J. M. C. 51 ; 6 Cox. 212 ; 18 Jur. 157.
(*k*) *Reg.* v. *Moah* (1858) 27 L. J. M. C. 204 ; 1 D. & B. 550 ; 4 Jur. (N.S.) 464.

held that the plea was bad, as there was no allegation of fraud, and the mere non-disclosure of a material fact was, except in the case of policies of insurance, no answer to an action upon a contract. And *Blackburn*, J., said: "If a servant turns out to be unfit for his duties he may be discharged, but if he is able and willing to perform his duties he may enforce the contract of service, except where he has been guilty of moral fraud. This is an attempt to apply the law of insurance to that of master and servant, for which there is no authority" (*l*).

Servants Characters Act, 1792.—The common law, however, was long ago regarded as being very inadequate to cope with the giving and using of false characters for the purpose of deceiving third persons, and in consequence, in 1792 (*m*), a statute was enacted entitled, "An Act for preventing the counterfeiting of certificates of the characters of servants." After reciting "that many false and counterfeit characters of servants have either been given personally or in writing, by evil disposed persons, being, or pretending to be, the master, mistress, retainer, or superintendent, of such servants, or by persons, who have actually retained such servants in their respective service, contrary to truth and justice, and to the peace and security of His Majesty's subjects; and that the evil complained of is not only difficult to be guarded against, but is also of great magnitude and continually increasing, and no sufficient remedy has hitherto been applied," it is enacted:—

Section 1. If any person or persons shall falsely personate any master or mistress, or the executor, administrator, wife, relation, housekeeper, steward,

(*l*) *Fletcher* v. *Krell* (1873), 42 L. J. Q. B. 55; 28 L. T. 105.
(*m*) 32 Geo. 3, c. 56.

agent or servant of any such master or mistress, and shall either personally or in writing give any false, forged or counterfeit character to any person offering himself or herself to be hired as a servant into the service of any person or persons, then and in such case every such person or persons so offending shall forfeit and undergo the penalty or punishment hereinafter mentioned.

Section 2. If any person or persons shall knowingly and wilfully pretend or falsely assert in writing that any servant has been hired or retained for any period of time whatsoever, or in any station or capacity whatsoever other than that for which or in which he, she or they shall have hired or retained such servant in his, her or their service or employment, or for the service of any other person or persons, that then, and in either of the said cases, such person or persons so offending as aforesaid shall forfeit and undergo the penalty or punishment hereinafter mentioned.

Section 3. If any person or persons shall knowingly and wilfully pretend, or falsely assert in writing, that any servant was discharged, or left his, her or their service at any other time than that at which he or she was discharged or actually left such service, or that any such servant had not been hired or employed in any previous service, contrary to truth, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned.

Section 4. If any person shall offer himself or herself as a servant, asserting or pretending that he or she hath served in any service in which such servant shall not actually have served; or with a false, forged or counterfeit certificate of his or her character; or shall in anywise add to, or alter, efface or erase any word, date, matter or thing contained in or referred to in any

certificate given to him or her by his or her last or former master or mistress, or by any other person or persons duly authorized by such master or mistress to give the same, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned.

Section 5. If any person or persons having before been in service shall, when offering to hire himself, herself or themselves as a servant or servants in any service whatsoever, falsely and wilfully pretend not to have been hired or retained in any previous service as a servant, that then and in such case, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned.

Section 6. If any person or persons shall be convicted of any or either of the offence or offences aforesaid, by his, her or their confession, or by the oath of one or more credible witness or witnesses before two or more justices of the peace for the county, riding, division, city, liberty, town or place where the offence or offences shall have been committed (which oath such justices are hereby empowered and required to administer), every such offender or offenders shall forfeit the sum of 20*l.*, one moiety whereof shall be paid to the person or persons on whose information the party or parties offending shall have been convicted, and the other moiety thereof shall go and be applied to the use of the poor of the parish wherein the offence shall have been committed; and if the party who shall have been so convicted shall not immediately pay the said sum of 20*l.* so forfeited, together with the costs and charges attending such conviction, or shall not give notice of appeal and enter into recognizance in the manner hereinafter mentioned and in that behalf provided, such justice shall and may commit every such offender to the house of correction or some other prison of the

county, riding, division, city, liberty, town or place in which he or she shall have been convicted, there to remain and be kept to hard labour.

Section 8. If any servant or servants who shall have been guilty of any of the offences aforesaid shall, before any information has been given or lodged against him, her or them for such offence, discover and inform against any person or persons concerned with him, her or them in any offence against this Act, so as such offender or offenders be convicted of such offence in manner aforesaid, every such servant or servants so discovering and informing shall thereupon be discharged and indemnified of, from and against all penalties and punishments to which at the time of such information given he, she or they might be liable by this Act, for or by reason of such, his, her or their own offence or offences.

Section 10. If any person shall think himself or herself aggrieved by anything done in pursuance of this Act, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace; and no conviction or order made concerning any matters aforesaid, or any other proceedings to be had touching the conviction or convictions of any offender or offenders against this Act, shall be quashed for want of form, or be removed by *certiorari*, or any other writ or process whatsoever, into any of His Majesty's courts of record at Westminster (*n*).

(*n*) Sections 7 and 9 are repealed, the former by 34 & 35 Vict. c. 116 [S. L. R. 1871], the latter by 47 & 48 Vict. c. 43.

CHAPTER XIV.

Apprenticeship.

Nature of apprenticeship. — Apprenticeship (from *apprendre*—to learn) is a contract somewhat different from the ordinary contract of hiring and service, for by it one person—the master—undertakes to teach, and the other—the apprentice—undertakes to learn some trade or profession, and to serve his master for a certain time. It is of the essence of the contract that the master shall instruct. The apprentice being usually an infant, his parent or guardian is in most cases a party to the contract as surety for his performing his part of the agreement, and if he fail to do so they may be sued by the master on the covenants. The parent or guardian cannot, however, execute the agreement on behalf of the infant (*o*). The apprentice must himself assent to and execute the contract, except in the case of parish apprentices (*p*). The apprenticeship must not be to the disadvantage of the infant apprentice, and should it be so the courts will not assist the master in compelling his apprentice to continue in the apprenticeship should he desire to terminate it (*q*).

Originally it was necessary for the contract of apprenticeship to be by indenture. Now, however, no particular form of agreement is required, and technical words are not necessary. It is sufficient to show that the intention was that the master should teach and

(*o*) *R.* v. *Arnesby* (1820) 3 B. & Ald. 584.
(*p*) 5 Eliz. c. 4. But see P. L. O. July 24th, 1847, Art. 67.
(*q*) *Meakin* v. *Morris* (1883), 12 Q. B. D. 352; 53 L. J. M. C. 72; 48 J. P. 344; 32 W. R. 661; *Corn* v. *Matthews*, [1893] 1 Q. B. 310.

the apprentice should learn (*r*), and even a verbal agreement may be binding (*s*).

Historical.—Apprenticeship appears to have been unknown to the ancients. The Roman law makes no mention of it, and there is no equivalent word in Greek or Latin. Apprenticeship arose in the Middle Ages in most of the countries of Europe in connection with the guilds and corporations which were then so generally formed as a means—it has been urged by some—of protection against the feudal lords, but more obviously for maintaining the privileges of certain bodies of workmen engaged in skilled industries, trades, and other occupations, and for preventing the entry into such industries and trades of any other than those who had gone through a long term of training in them. The term of such apprenticeship was usually seven years.

The word apprentice was originally more widely used than in recent times, for it was applied to professions as well as trades. Barristers, for example, when first appointed by Edward I., were termed *apprentici ad legem*; and the serjeants *servientes ad legem*, and the seven years standing for the degree of master at the Universities is attributed to a similar origin.

Apprenticeship is referred to as far back as 1388, in a statute made at Cambridge in the reign of Richard II. (*t*); and in the next reign it was enacted that no one should put his child apprentice unless he had 20*s*. per annum in land or rent (*u*). In the reign of Elizabeth a very important Act was passed, known as the *Statute of Apprentices* (*x*), which made a seven years' apprenticeship compulsory for everyone who exercised any trade or mystery. This Act

(*r*) *R.* v. *Laindon* (1797), 8 T. R. 379; *R.* v. *Rainham* (1801), 1 East, 531.
(*s*) *R.* v. *Ightman* (1836), 4 A. & E. 937.
(*t*) 12 Ric. 2, c. 4.
(*u*) 7 Hen. 4, c. 87 (1405).
(*x*) 5 Eliz., c. 4.

remained in force for more than 250 years, and undoubtedly exercised an enormous influence on the extension and scope of many trades and industries. By section 20, merchants were not to take as apprentices anyone whose father had less than 40*s.* of freehold per annum. In other trades the amount was 3*l.* per annum (sections 22, 25). Section 24 enacted that no one was to engage in any art, mystery or manual occupation now in use unless he had been an apprentice thereto for seven years. Sections 21 and 26 restricted the number of apprentices any one person might take. Minors refusing to become apprentices might be imprisoned until they complied (section 28). The restriction on freedom of employment imposed by this statute was never looked upon with favour by the judges. In an old case (*y*), as far back as 1690, one of the judges said "that no encouragement was ever given to prosecution upon this statute, and that it would be for the common good if it were repealed, for no greater punishment can be to the seller than to expose goods to sale ill-wrought, for by such means he will never sell more." Lord *Mansfield* in *Reynard* v. *Chase* (*z*) was very emphatic, laying down four propositions :—(1) This is a penal law; (2) it is a restraint of natural right; (3) it is contrary to the general right given by the common law of this kingdom; (4) the policy upon which the Act was made is from experience become doubtful. And Lord *Kenyon* in a later case (*a*) is reported to have said, "When the Act was made those who framed it might find it beneficial, but the ink with which it was written was scarce dry ere the inconvenience of it was perceived."

The courts soon ruled that the Act applied only to industries and trades which were in existence in the

(*y*) Dolben, J., in *Hobbs* v. *Young* (1690), 3 Mod. 317.
(*z*) *Reynard* v. *Chase* (1756), 1 Burr. Rep. 2.
(*a*) *Smith* v. *Company of Armourers* (1793), Peake's Cases, 148.

country at the time it was passed. This ruling gave rise to absurdities, which did not escape the notice of the critics of the Act.

Towards the close of the last century the Act encountered the strongest and most bitter criticism at the hands of Adam Smith and the school of political economy he initiated. They were so impressed with the obstruction caused by the Act to the free circulation of labour from one employment to another even in the same place, and the obstruction by the exclusive privileges of corporations to its free movement from one place to another, even in the same employment, that they condemned in the strongest terms the system of apprenticeship altogether. Adam Smith (*b*) contended that trade was restrained directly by the limitations imposed as to the number of apprentices, and indirectly by the long term of apprenticeship, and also by the increased expense of education. "It often happens," he says, "that while high wages are given to workmen in one manufacture, those in another are obliged to content themselves with bare subsistence. The one is in an advancing state, and has therefore a continual demand for new hands; the other is in a declining state, and the superabundance of hands is continually increasing. The two manufactures may sometimes be in the same town, and sometimes in the same neighbourhood, without being able to lend the least assistance to one another. The Statute of Apprentices may oppose it in the one case, and both that and an exclusive corporation in the other. In many manufactures, however, the operations are so much alike that the workmen could easily change trades with one another if those absurd laws did not hinder them." And, again, he remarks, "The

(*b*) Wealth of Nations. Book 1, Chap. X, Part 2.

patrimony of a poor man lies in the strength and dexterity of his hands, and to hinder him from employing his strength and dexterity in what manner he thinks fit without injury to his neighbour is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the others from employing those whom they think proper. To judge whether he is fit to be employed may surely be trusted to the discretion of the employers whose interest it so much concerns. The affected anxiety of the lawgiver lest they should employ an improper person is evidently as impertinent as it is oppressive."

It does not seem to have occurred to this distinguished critic that the general adoption of the apprenticeship system by nearly all European countries evidently satisfied some want of the time, and he ignored the advantages to the production of skilled labour of even a lengthy period of enforced, regular and methodical training in early life. As was said in an old case (*c*) not very long after the passing of the Act, "the statute of 5 Eliz. c. 4 was not enacted only to the intent that workmen should be skilful, but also that youth should not be nourished in idleness, but brought up and educated in lawful sciences and trades."

As the result of the criticism passed upon it, and of the expansion of trade, the Act of Elizabeth was repealed in 1814 (*d*) so far as it enacted that no person should exercise any trade without having served a seven years' apprenticeship. The City of London and other corporations were, however, excepted, and it was

(*c*) *Ipswich Tailors case* (1615), 11 Co. 54 n.
(*d*) 54 Geo. 3, c. 96.

not till the Municipal Corporations Act of 1835 (*e*) that the latter were included in the repeal, the City of London still remaining an exception. The Act of Elizabeth was wholly repealed by the *Conspiracy and Protection of Property Act*, 1875 (*f*).

Apprenticeship from being compulsory thus became voluntary, and has steadily declined since. It is worth noting, however, that, *pari passu* with the decline of apprenticeship and the corporations associated with it, other combinations of those engaged in skilled industries, trades and labour generally have arisen, and grown to great proportions, as evidenced by the many large and powerful trade unions now existing. It is also to be remarked that in the learned professions the same principle of requiring a definite training extending over a lengthened period as a preliminary to entrance into them, and the exclusion of those who do not satisfy this requirement, has been made much more rigorous, rather than diminished, as for example in law and medicine, and that the tendency is more and more in the same direction is seen in the gradual extension of a similar exclusiveness to other professions.

Nevertheless apprenticeship still exists, and to a greater extent than is often supposed. And it has been urged by some of those best acquainted with, and most successful in the building up of great industries, that the solution of the problem of technical instruction, which has of late been so much discussed, would be much advanced by a wide extension of the apprenticeship system. As a peculiar and interesting phase of the relation of master and servant, apprenticeship merits a brief notice at least in this work.

Questions concerning apprenticeship were constantly raised in settlement cases under the poor law, for by

(*e*) 5 & 6 Will. 4, c. 76.
(*f*) 38 & 39 Vict. c. 86, s. 17.

certain statutes (*g*) a settlement was gained in the place where an apprenticeship had been served. And the section in the Act of William and Mary to this effect still remains unrepealed.

The parties to the contract.—These are the master and the apprentice, and they alone are necessary; but where the apprentice is an infant the father or guardian is usually also a party as surety for the good behaviour of the apprentice, and may be sued by the master on the covenants should the apprentice misconduct himself. "The very end of binding the father was to answer the wrong which might be done by the son to his master; therefore the father must be obliged for his son's true performance of the articles. It is a joint covenant . . . . . and this makes the covenant of the son bind the father who covenanted for him as well as for himself (*h*)."

Any one capable of making a contract can by the common law take an apprentice. Even an infant may do so (*i*). The apprentice may be of any *age* over seven years (*k*), except parish apprentices, who must not be bound till they have attained nine years of age (*l*). An *alien trader* by an Act of Henry VIII. (*m*) was incapacitated from taking apprentices, but this was repealed during the present reign (*n*). The incapacity of *a married woman* to take apprentices is no doubt removed by the Married Women's Property Act, 1882 (*o*). An apprentice may be bound to a firm of *partners*, but on the dissolution of the partnership he is no longer

(*g*) 14 Car. 2, c, 12 (1662); 3 W. & M. c. 11, s. 7.
(*h*) *Whitley* v. *Loftus* (1724), 8 Mod. 190.
(*i*) *Rex* v. *S. Petrox, Dartmouth* (1791), 4 T. R. 196.
(*k*) *Reg.* v. *Saltern* (1874), 1 Bott. 613.
(*l*) 56 Geo. 3, c. 139, s. 7.
(*m*) 14 & 15 Hen. 8, c. 2.
(*n*) 19 & 20 Vict. c. 64.
(*o*) 45 & 46 Vict. c. 75, s. 7, sub-s. (2).

bound to any of the partners (*p*); and where a firm of four partners dissolved partnership, and the business was so divided that two of them carried on the manufacturing part in one place and the other two the selling part in another, it was held that neither of them was the successor of the original firm and entitled to the services of an apprentice who refused to continue to serve (*q*). A *corporation* may also take apprentices if it is in a position to give them proper instruction (*r*). An infant apprentice is liable to serve his master's executors after his master's death, if it has been so agreed in the indenture of apprenticeship, and the apprentice will not escape conviction by the justices for absenting himself, although legally advised that he may do so (*s*).

The contract.—The contract of apprenticeship was originally by indenture, though it may be noted that in the Act of Elizabeth indenture is only specified in the section referring to apprentices in husbandry (*t*), but its necessity was abolished in 1758 (*u*), and a later statute (*x*) made any contract of apprenticeship valid if made by agreement in writing, and by the *Stamp Act*, 1891 (*y*) every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade, or employment (except articles of clerkship to a solicitor, or law agent, or writer to the signet), is to be deemed an instrument of apprenticeship. No technical words are requisite, the important point is the intention. "The party need

(*p*) *Rex* v. *S. Martins, Exeter* (1835), 2 A. & E. 655; *Brooks* v. *Dawson* (1869), 33 J. P. 720.
(*q*) *Eaton* v. *Western* (1882), 9 Q. B. D. 636; 52 L. J. Q. B. 41; 47 L. T. 593; 47 J. P. 196.
(*r*) *Burnley Indust. Soc.* v. *Carson*, [1890] 1 Q. B. 75; *Cf.* 3 & 4 Will. 4, c. 63, s. 2.
(*s*) *Cooper* v. *Simmons* (1862), 31 L. J. M. C. 138; 5 L. T. 712; 7 H. & N. 707; 10 W. R. 270; 8 Jur. (N.S.) 81.
(*t*) 5 Eliz. c. 4, s. 18.
(*u*) 31 Geo. 2, c. 11, s. 1.
(*x*) 54 Geo. 3, c. 96, s. 2.
(*y*) 54 & 55 Vict. c. 39, s. 25.

not be retained *eo nomine* as an apprentice," said Lord *Kenyon*, in *Rex* v. *Rainham* (*z*), "it is enough if the purpose of the contract be that one shall teach and the other learn the trade. No technical words are necessary to constitute the relation of master and apprentice; nor is it necessary that there should be any premium." And again, in *Rex* v. *Laindon* (*a*), it was laid down that whether a contract is a contract of apprenticeship or of hiring and service must depend on the intentions of the parties, which is to be collected from the whole of their agreement. A contract of apprenticeship may be formed without using the word apprentice. Parol evidence may be received to explain the written instrument. And *Grove*, J., added "An apprentice is a person who by contract is to be taught a trade, in contradistinction from a person who engages to serve another person generally." Even a verbal agreement may constitute a valid contract of apprenticeship (*b*). The consent of the apprentice is essential to the contract. A father has at common law no authority to bind his infant son without his assent (*c*). This assent is not necessary in the case of parish apprentices (*d*). And the apprentice must execute the agreement; thus, for instance, an indenture which was not executed by the apprentice (an adult), but by her father-in-law with her consent, was held invalid (*e*). An infant apprentice unable to write may execute through a third party (*f*).

Execution is necessary to enable either party to sue on the covenants. But it is not essential that the

(*z*) *Rex* v. *Rainham* (1801), 1 East, 531.
(*a*) *Rex* v. *Laindon* (1797), 8 T. R. 379.
(*b*) *Rex* v. *Lightman* (1836), 4 A. & E. 937.
(*c*) *R.* v. *Arnesby* (1820), 3 B. & Ald. 584. *The Case of Chesterfield* (1697), 2 Salk, 479.
(*d*) 43 Eliz. c. 2, s. 3. *Cf. S. Nicholas* v. *S. Botolph* (1862), 31 L. J. M. C. 258.
(*e*) *R.* v. *Ripon* (1808), 9 East, 295.
(*f*) *R.* v. *Longnor* (1833), 4 B. & Ad. 647.

master sign a counterpart to the agreement, but if he does it is evidence against him though the apprentice has not executed it (*g*).

A contract of apprenticeship is not complete unless the master undertakes to teach (*h*) and the apprentice undertakes to *serve* as well as to learn. "There is no contract for his serving his master," said Lord *Ellenborough*, in *R.* v. *Cromford* (*i*), "nothing to bind the son to serve. . . . This was no apprenticeship."

Term.—There is no fixed term of apprenticeship. Under the statute of Elizabeth (*k*) the indenture was for seven years at least, and if for a shorter term was voidable at the election of the apprentice (*l*); but though voidable it was not void for being less than seven years (*m*). And a settlement was gained by serving an apprenticeship for forty days (*n*), and the forty days need not be consecutive (*o*); the settlement is gained where he sleeps, not where he works (*p*); if two places have been slept in a sufficient time the place at which the last night of the apprenticeship was passed will become the place of settlement (*q*).

Consideration.—The sum of money actually paid as premium must be stated in the indenture or it will be void, even though stamped (*r*). Where, therefore, the

(*g*) *Burleigh* v. *Stibbs* (1793), 5 T. R. 465; *Millership* v. *Brookes* (1860), 29 L. J. Ex. 369.

(*h*) *Lees* v. *Whitcomb* (1828), 5 Bing. 34.

(*i*) *R.* v. *Cromford* (1806), 8 East, 24; *The Case of Chesterfield* (1697), 2 Salk. 479.

(*k*) 8 Eliz. c. 4.

(*l*) *Burnley* v. *Jennings* (1806), 6 Esp. 8.

(*m*) *S. Nicholas* v. *S. Peter* (1737), 2 Bott. 493; Burr. S. C. 91; *Gray* v. *Cookson* (1812), 16 East, 13; *Rex* v. *Everard* (1777), 1 Bott. 638; *Rex* v. *Chalbery* (1730), 1 Bott. 706.

(*n*) *Rex* v. *Charles* (1772), 2 Bott. 565.

(*o*) *R.* v. *Cirencester* (1724), 1 Stra. 579.

(*p*) *S. Mary* v. *Radcliffe* (1717), 1 Stra. 59.

(*q*) *Reg.* v *Burton* (1863), 32 L. J. M. C. 102.

(*r*) *R.* v. *Baildon* (1832), 3 B. & Ad. 427; *R.* v. *Amersham* (1836), 4 A. & E. 508.

amount stated in the indenture was 20*l.*, and the defendant gave an I. O. U. for 20*l.* in addition, the deed was held void (*s*). But some further consideration which does not directly benefit the master, as providing clothes or other necessaries for the apprentice, has been held not to invalidate the contract (*t*). There need not be any premium (*u*).

Stamp.—Any instrument of apprenticeship requires, independently of the amount of premium paid, a 2*s.* 6*d.* stamp, except—

(1.) Such an instrument relating to any poor child apprenticed by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, or pursuant to any Act for the regulation of parish apprentices.

(2.) Instrument of apprenticeship in Ireland, where the value of the premium or consideration does not exceed 10*l.* (*x*).

The master pays the stamp duty. If unstamped the indenture is void, and is useless as evidence. But it may be stamped after execution on paying for the stamp and a penalty of 10*l.* (*y*).

Covenants.—The covenants in an indenture of apprenticeship are independent covenants, and consequently acts of misconduct on the part of the apprentice stated in the plea are not an answer to an action for breach of covenant by the master to instruct and maintain the apprentice during the term agreed on by the indentures (*z*).

A parent or guardian who is party to the contract as

(*s*) *Westlake* v. *Adams* (1858), 27 L. J. C. P. 27.
(*t*) *R.* v. *Northoram* (1740), 2 Stra. 1132; *R.* v. *Leighton* (1792), 4 T. R. 732.
(*u*) *R.* v. *Rainham* (1801), 1 East, 531.
(*x*) 54 & 55 Vict. c. 39, Schedule 1.
(*y*) 54 & 55 Vict. c. 39, s. 15.
(*z*) *Winstone* v. *Linn* (1823), 1 B. & C. 460.

surety for the good conduct of the apprentice may be sued by the master on the covenants. But if an infant voluntarily bind himself, which he may do, neither at common law nor by statute does the covenant or obligation for his apprenticeship bind him (*a*). An apprentice who left his master, and with his approval entered the King's service, does not thereby avoid his apprenticeship (*b*). The misconduct of the apprentice is usually no ground for discharge unless there is a proviso to that effect (*c*). Where, however, it was shown that the apprentice was an habitual thief, it was held to be a good defence on the master's part to an action for breach of covenant to keep, teach, and maintain the apprentice (*d*). In a case where a master moved one hundred miles from the place where the apprentice (who did not reside with his master) was bound, it was held that there was a breach of the agreement by the master (*e*). By an apprentice deed between an infant, his parent, and the plaintiff, it was agreed that an infant should be taught stage dancing but should not take any engagements elsewhere, but there was no undertaking by the plaintiff to support the infant when out of employment. It was held that it was a contract unreasonable and unenforceable against either the infant or her parent (*f*).

An apprentice who was an infant at the time of the deed, found by the jury to be a proper and necessary one if he wished to learn the business, was held liable to pay the balance of the premium three and a half years after, on the ground that the liability of the infant

(*a*) *Gylbert* v. *Fletcher* (1629) Cro. Car. 179.
(*b*) *Rex* v. *Hindringham* (1796), 6 T. R. 557.
(*c*) *Phillips* v. *Clift* (1850), 28 L. J. Ex. 153; 4 H. & N. 168; 5 Jur. (N.S.) 74.
(*d*) *Learoyd* v. *Brook*, [1891] 1 Q. B. 431.
(*e*) *Eaton* v. *Western* (1882), 9 Q. B. D. 636; 52 L. J. Q. B. 41 47 L. T. 593; 47 J. P. 196; 31 W. R. 313; *Royce* v. *Charlton*, 8 Q. B. D. 1; 45 L. T. 712; 46 J. P. 197; 30 W. R. 274, overruled.
(*f*) *De Francesco* v. *Barnum* (1890), 45 Ch. D. 430.

for necessary instruction duly provided stood upon the same footing as that for ordinary necessaries supplied to him, and that consequently the fact that he had entered into a covenant under seal for the payment of the premium did not prevent him from being liable for the amount claimed (*g*).

The contract must not be disadvantageous to the apprentice if an infant.—This was clearly laid down in the important case of *Reg.* v. *Lord* (*h*), where by a contract an infant agreed to enter into the service of a master for twelve years at certain weekly wages, and to serve him at all times during that term, and to work fifty-eight hours a week, contained a proviso that in case the steam-engine should be stopped from accident or any other cause, that the master might retain all wages of the servant during that time. It was held that the agreement was void against the infant, and that a conviction for absenting himself from such service could not be supported. This case was followed in a later one (*i*) which turned upon an apprenticeship deed, which contained a provision that the master should not be liable to pay wages to the apprentice so long as his business should be interrupted or impeded by or in consequence of any turn-out, and that the apprentice might during any such turn-out employ himself in any other manner, or with any other person, for his own benefit. The court decided that this provision was not beneficial to the infant, and, therefore, the deed could not be enforced against him. *Meakin* v. *Morris* was followed and approved in a recent case (*k*), which contained a similar provision with regard to a turn-out, with the addition that the apprentice might continue in

(*g*) *Walter* v. *Everard*, [1891] 2 Q. B. 369.
(*h*) *Reg.* v. *Lord* (1848), 17 L. J. M. C. 181 ; 12 Q. B. 757 ; 12 Jur. 1001.
(*i*) *Meakin* v. *Morris* (1884), 12 Q. B. D. 352 ; 53 L. J. M. C. 72 ; 48 J. P. 344 ; 32 W. R. 661.
(*k*) *Corn* v. *Matthews*, [1893] 1 Q. B. 310.

any employment he engaged in during the lock-out for such reasonable time thereafter as might be necessary for him to determine such employment, but during such other employment the master should not be bound to teach or instruct him. The provision was held to be so much to the detriment of the infant that the apprenticeship deed could not be enforced against him under the Employers and Workmen Act, 1875 (*l*), and Lord *Esher*, M.R., in his judgment, said: "It is impossible to frame a deed, as between a master and an apprentice, in which some of the stipulations are not in favour of the one and some in favour of the other. But if we find a stipulation in the deed which is of such a kind that it makes the whole contract an unfair one, then that makes the whole contract void. The stipulation which is objected to must be so unfair that it makes the whole contract as between the apprentice, or the infant, and the master, an unfair one to the infant."

In *De Francesco* v. *Barnum* (*m*), an apprenticeship deed between an infant, her parent, and a teacher of dancing was held void by *Fry*, L.J., in a long and careful judgment, on the ground that its provisions were unreasonable, and therefore unenforceable against either the infant or her parent. They gave the master the right to the services of the apprentice at any time, but whilst preventing her from obtaining other employment the master was under no obligation to find employment for the apprentice. "Those are stipulations of an extraordinary and an unusual character," said the Lord Justice, "which throws or appear to throw an inordinate power into the hands of the master without any correlative obligation on his part."

(*l*) 38 & 39 Viet. c. 90.

(*m*) *De Francesco* v. *Barnum* (1890), 45 Ch. D. 430; *Cf. Leslie* v. *Fitzpatrick* (1877), 3 Q. B. D. 229; 47 L. J. M. C. 22; 37 L. T. 461; and *Fellows* v. *Wood* (1888), 59 L.T. 513, in neither of which, however, was the agreement an apprenticeship deed strictly speaking.

Dissolution of the contract.—As with other contracts, the contract of apprenticeship is dissolved by *effluxion of time*, when the indenture belongs to the apprentice to whom it should be given (*n*), or by *mutual consent*, as by cancelling the indenture (*o*). Such mutual consent is only possible with an apprentice over twenty-one years of age. An infant apprentice has no such power. An infant who had bound himself apprentice for seven years, after serving three of them quarrelled with his master, and the latter offered to sell him the remainder of his time for sixpence: having received the money, he went away and bound himself to another master; but he was adjudged to have no such power to dissolve the apprenticeship (*p*). This decision was based on the general rule of law that an infant cannot do any act to bind himself, unless it be manifestly for his benefit. Binding himself an apprentice has been considered such an act, and, therefore, it has been held that an infant is competent to make such a contract. If then, it is for the benefit of the infant to bind himself an apprentice, it is impossible to say generally that it is for his benefit to dissolve such a connexion; such a position involves a contradiction.

On *coming of age* the apprentice may terminate the apprenticeship (*q*). This is not affected by the Employers and Workmen Act, 1875 (*r*). But the determination must be made within reasonable time, and it has been decided that eighteen months is not reasonable (*s*.)

Gross misconduct, such as habitual thieving, may

(*n*) *Reg.* v. *Hinckley* (1863), 32 L. J. M. C. 158.

(*o*) *R.* v. *Harburton* (1786), 1 T. R. 139. See *R.* v. *Wotton* (1769), 1 Bott. 712; *R.* v. *S. Luke's* (1765), 1 Bott. 710.

(*p*) *R.* v. *Wigston* (1824), 3 B. & C. 484; 5 D. & R. 339. See judgment of ABBOTT, C.J.

(*q*) *Moore* v. *Smith* (1875), 39 J. P. 772. *Ex parte Davis* (1794), 5 T. R. 715. *Cf.* 5 Eliz. c. 4, s. 25.

(*r*) 38 & 39 Vict. c. 90.

(*s*) *Wray* v. *West* (1866), 15 L. T. (N.S.) 180; 30 J. P. 726.

entitle the master to dissolve the contract (*t*). But at common law the master has no right to put an end to the contract in case of misconduct of the apprentice (*u*). This is clearly evident from the fact that the Legislature expressly gave this power to the master in the case of parish apprentices upon his making complaint to two justices (*x*). Where, however, the contract contained a proviso that the apprentice should obey all commands and give his service entirely to the business during office hours, a master was held justified in discharging the apprentice for misconducting himself and habitually neglecting his duties (*y*). *Blackburn*, J., in this case observed, "I do not think it would be a fair construction of this contract that a *single* act of misconduct would be such a breach as would justify this dismissal."

If an apprentice *enlist* without his master's consent and thereby desert his work it is good ground for terminating the contract (*z*). And by the *Volunteer Regulations* an apprentice cannot be enrolled without his master's consent.

If an apprentice *unlawfully absent* himself from his master's service the master may recover damages for his absence, but only from the date of his departure until the issue of the writ, and he is not entitled to any prospective damages for the whole term of the apprenticeship (*a*). But the mere act of an apprentice absenting himself will not enable him to avoid the indenture (*b*).

The *death of apprentice or master* puts an end to the

(*t*) *Learoyd* v. *Brook*, [1891] 1 Q. B. 431. But see *Phillips* v. *Clift* (1859), 28 L. J. Ex. 153; 4 H. & N. 168; 5 Jur. (N.S.) 74.

(*u*) *Winstone* v. *Linn* (1823), 1 B. & C. 460; *Philips* v. *Clift* (1859), 28 L. J. Ex. 153; 4 H. & N. 168; 5 Jur. (N.S.) 74.

(*x*) 20 Geo. II., c. 17.

(*y*) *Westwick* v. *Theodor* (1875), 44 L. J. Q. B. 120; 32 L. T. 696; L. R. 10 Q. B. 224; 23 W. R. 620.

(*z*) *Hughes* v. *Humphreys* (1827), 6 B. & C. 620.

(*a*) *Lewis* v. *Peachey* (1862), 31 L. J. Ex. 496; 1 H. & C 518; 10 W. R. 797; but see *Marr* v. *Jones* (1890), 25 Q. B. D. 107.

(*b*) *Gray* v. *Cookson* (1812), 16 East, 13.

apprenticeship (*c*), unless there be a provision in the deed to the effect that the apprentice is bound to the master's executors, in which case the apprentice is obliged to continue with the executor (*d*). If the master die before the term of apprenticeship is completed no part of the premium can be recovered from the master's executors, according to the rule that where a special sum is paid for a special consideration, and there is a partial failure, a party cannot recover even part, the consideration not being severable (*e*). Similarly the father of an articled clerk was unable to recover any of the premium paid to a solicitor who died before the term of the clerkship had expired (*f*). But if there is a proviso that on certain conditions, as, for instance, *ill-health of the apprentice*, a part of the premium shall be returned, and those conditions are fully satisfied, the father of the apprentice may recover from the master (*g*). If, however, the apprentice is wholly incapacitated by *permanent illness* from carrying out his part of the contract, although there is no reference to such a condition in the deed, he will be absolved from the contract on the ground that there must be an implied condition that the apprentice shall continue in a state of ability to perform his contract (*h*).

Dissolution of partnership, if the apprentice has been bound to a firm of partners, dissolves the contract, even though the apprentice continue for a time to serve one of the partners after the partnership has been

(*c*) *Baxter* v. *Burfield* (1747), 12 Stra. 1266.

(*d*) *Cooper* v. *Simmons* (1862), 31 L. J. M. C. 138; 5 L. T. 712; 7 H. & N. 707; 10 W. R. 270; 8 Jur. (N.S.) 81. See *R.* v. *Peck* (1698), 1 Salk. 65, Holt, C.J.

(*e*) *Whincup* v. *Hughes* (1871), 40 L. J. C. P. 104; L. R. 6 C. P. 78; 24 L. T. 76; 9 W. R. 183.

(*f*) *Ferris* v. *Carr* (1885), 54 L. J. Ch. 478.

(*g*) *Humber* v. *Derby* (1867), 15 L. T. 538.

(*h*) *Boast* v. *Firth* (1869), 38 L. J. C. P. 1; L. R. 4 C. P. 1; 19 L. T. 264; 17 W. 29. *Cf. Taylor* v. *Caldwell* (1863), 32 L. J. Q. B. 64; 3 B. & S. 826.

dissolved (*i*). And if a business carried on by a number of partners be divided so that neither of the succeeding businesses is exactly the continuation of the original one, the apprenticeship may be dissolved by the apprentice, and similarly if a business is removed from one place to another, the apprentice not residing with the master (*k*). These cases would appear to answer in the negative the question raised, but not answered, in the case of *Lloyd* v. *Blackburn* (*l*), whether the apprenticeship may still exist if on a dissolution of partnership one partner agrees to resign the apprentice to the other.

The *bankruptcy of the master* is a complete discharge of the indenture of apprenticeship, if either the bankrupt or apprentice gives notice in writing to the trustee to that effect. And the trustee may treat the claim by an apprentice for repayment of part of the premium as preferential, and in determining the amount to be so repaid he will take into account the amount paid by the apprentice on his behalf, the time he has served, and the other circumstances of the case. The trustee, if it seems expedient to him, instead of so repaying part of the premium, may, on the application of the apprentice or any person acting on his behalf, transfer the indenture of apprenticeship to some other person (*m*).

Ill-treatment to afford ground for terminating the agreement must be of a serious character, and such that the apprentice has reasonable ground for fearing that grievous bodily harm would be inflicted on him. Such fear would justify the apprentice in leaving his master (*n*).

It may here be mentioned that the *marriage of an*

(*i*) *Brook* v. *Dawson* (1869), 33 J. P. 726.
(*k*) *Eaton* v. *Western* (1882), 52 L. J. Q. B. 41 ; 9 Q. B. D. 636 ; 47 L. T. 593 ; 47 J. P. 196.
(*l*) *Lloyd* v. *Blackburn* (1842), 11 L. J. Ex. 210 ; 9 M. & W. 363 ; 1 Dowl. (N.S.) 647.
(*m*) Bankruptcy Act (1883), 46 & 47 Viet. c. 52, s. 41. *Cf. Ex parte Sandby* (1745), 1 Atk. 149.
(*n*) *Halliwell* v. *Counsell* (1878), 38 L. T. 176.

apprentice does not affect the contract, and is not a good cause for his discharge, for the remedy is an action upon the covenant (*o*). And restraint of marriage being illegal, the insertion in the indenture of a covenant against marriage would be void (*p*).

Though a contract of apprenticeship be under seal, it can be discharged by a parol agreement; the old common law doctrine that a contract under seal could not be discharged by parol having given way to the equitable one that a parol discharge is a ground for staying proceedings on the original deed (*q*).

Rights and Duties of the Parties.

The master.—The master has a right to the *exclusive service* of his apprentice, and a right of action against those who entice him away, detain, or harbour him (*r*). But an indictment does not lie for enticing away an apprentice (*s*). The *measure of damages for so enticing away* an apprentice is not to be ascertained by the actual loss the master suffers at the time, but for the injury done him by causing the apprentice to leave his employment (*t*).

The master has no legal right to the *custody* of his apprentice, and he is not entitled to sue out a *habeas corpus* to bring him up. This was decided in a case (*u*) where a master endeavoured to obtain a writ of *habeas corpus* to bring up his apprentice, aged eighteen, who had voluntarily entered into the sea-service. Lord *Kenyon* quashed the writ of *habeas corpus*, and said, "the apprentice who is of sufficient age to judge for himself, should have applied for it if he had wished it,

(*o*) *R.* v. *Tardebigg* (1754), Sayer, 100.
(*p*) *Woodhouse* v. *Shapley* (1742), 2 Atk. 535.
(*q*) *Nash* v. *Armstrong* (1861), 10 C. B. (N.S.) 259. *Per* Willis, J.
(*r*) *Lightly* v. *Clouston* (1808), 1 Taunt. 112.
(*s*) *Reg.* v. *Daniel* (1705), 6 Mod. 182.
(*t*) *Gunter* v. *Astor* (1819), 4 Moore, 12.
(*u*) *R.* v. *Reynolds* (1795), 6 T. R. 497.

the master had his remedy in action for seducing his apprentice." And in another case (*x*), shortly after, the same judge ruled that where an apprentice was impressed into the sea-service, the master could not sue out a *habeas corpus* to bring him up to be discharged, though the apprentice himself could; but further, that a warrant could be issued to bring up the apprentice on the application either of the master or the apprentice.

All the *earnings of the apprentice* by right belong to his master (*y*). This will still be so if the apprentice, with the consent of his master, serves another, unless it is specially agreed otherwise. And it has been held that an apprentice who had run away to sea could not legally claim his wages while on board ship, because such wages really belonged to his master (*z*). A master can only turn his apprentice away for *misconduct*, if it is gross and habitual (*a*), but not if the misconduct is slight or trivial (*b*). If a master licence his apprentice to leave him, he cannot after recall that licence (*c*).

The master may *chastise his apprentice* with moderation (*d*), but if the chastisement be such as to cause the apprentice to have reasonable ground for fearing severe bodily harm, he may leave his master's service (*e*).

It is the *duty* of the master to *teach* his apprentice his trade, and if he fail to do so, it will be good ground for rescinding the contract (*f*). If the apprentice reside with his master, it is the duty of the latter to

(*x*) *R.* v. *Edwards* (1798), 7 T. R. 745.
(*y*) *Barber* v. *Dennis* (1704), 1 Salk. 68; 6 Mod. 69.; *R.* v. *St. Nicholas* (1736), Burr. S. C. 91.
(*z*) *Bright* v. *Lucas* (1797), 2 Peake, 121.
(*a*) *Learoyd* v. *Brook*, [1891] 1 Q. B. 431.
(*b*) *Winstone* v. *Linn* (1823), 1 B. & C. 460.
(*c*) Anon (1704), 6 Mod. 70. *Per* Lord HOLT, C. J.
(*d*) *Gylbert* v. *Fletcher* (1629), Cro. Car. 179. *Penn* v. *Ward* (1835), 2 C. M. & R. 338.
(*e*) *Halliwell* v. *Counsell* (1878), 38 L. T. 176.
(*f*) *Elton* v. *Topp* (1881), 20 L. J. Ex. 241; *Lees* v. *Whitcomb* (1828), Bing. 34.

supply him with food and lodging, and medicine if he fall ill, and if through neglect to do so, the health of the apprentice is likely to be severely or permanently injured, he renders himself liable to a penalty of 20*l.*, or imprisonment for a term not exceeding six months, with or without hard labour (*g*).

Whilst a master cannot *assign his apprentice* to another person without his consent (*h*), yet if at any time he has not in his own business sufficient employment for him, he may place him in the service of another engaged in a similar line of business. For this *Smith* v. *Francis* (*i*) is an authority which decided that when a person qualified to take apprentices, under the Watermen and Lightermens Act, 1859 (*k*), has no employment for the time being for his apprentice, he may find temporary employment for such apprentice, with another person so qualified.

The apprentice.—The apprentice is entitled to be *instructed by his master in his trade*, and if the master fail to do so, the apprentice has a right of action against him (*l*). The proper course for the apprentice to pursue is *to sue his master on the covenants*. Where a master undertook to teach the three trades of auctioneer, appraiser and cornfactor in which he was engaged, and afterwards, in consequence of giving up that of cornfactor, was unable to continue giving instruction in all three trades, it was held to be a breach of the agreement, even although the consent of the apprentice had been given, and that he served after the business was given up, and the apprentice was

(*g*) 38 & 39 Vict. c. 86, s. 6. See *R.* v. *Smith* (1837), 8 C. & P. 153.
(*h*) *Coventry* v. *Woodhall* (1616), Hob. Rep. 134; *Baxter* v. *Burfield* (1747) 2 Stra. 1266.
(*i*) *Smith* v. *Francis* (1891), 55 J. P. 407.
(*k*) 22 & 23 Vict. c. 133, s. 66, Bye-law 35.
(*l*) *Lees* v. *Whitcomb* (1828), 5 Bing. 34.

justified in absenting himself (*m*). The apprentice is also entitled to be *taught the whole of his trade.* A master, therefore, was unable to compel his apprentice to continue in his service after the business had been divided into two parts, manufacturing and selling, carried on in different places (*n*). This case also decided that an apprentice not residing with his master, bound in one town, cannot be compelled to serve in another a long distance off, to which his master has removed his business. A master has no right to send his apprentice out of the realm unless the business is such as requires it, as a merchantman or seaman (*o*). Any dispute arising with regard to the master not teaching, or otherwise, may now be settled before a court of summary jurisdiction, and the justices have power to rescind an instrument of apprenticeship (*p*). An apprentice at common law is entitled *primâ facie* to be taught by his master, and the *master's retirement from business* is no answer to an action by the apprentice for not doing so, and if a *firm of partners* to whom the apprentice has been bound dissolves partnership he may sue each of the partners for breach (*q*).

If by the contract the master undertakes to pay wages to his apprentice, the latter will be entitled to them, though incapacitated temporarily from serving through illness (*r*).

It is of course the *first duty* of the apprentice to serve his master with diligence and respect, and to obey his orders as far as they are connected with his

(*m*) *Ellen* v. *Topp* (1851), 20 L. J. Ex. 241 ; 6 Ex. 424 ; 15 Jur. 451.
(*n*) *Eaton* v. *Western* (1882), 9 Q. B. D. 636 ; 52 L. J. Q. B. 41 ; 47 L. T. 593 ; 47 J. P. 196 ; 31 W. R. 313 ; *Royce* v. *Charlton* (1881), 8 Q. B. D. 1 ; 5 L. T. 712 ; 46 J. P. 197 ; 30 W. R. 274, overruled.
(*o*) *Coventry* v. *Woodhall* (1616), 1 Hob. Rep. 134.
(*p*) 38 & 39 Vict. c. 90, ss. 5, 6 (2).
(*q*) *Couchman* v. *Sillar* (1870), 22 L. T. 480.
(*r*) *Patten* v. *Wood* (1887), 51 J. P. 549.

trade. His master may call on him to assist in *instructing apprentices* less experienced than himself.

If an apprentice work *overtime*, he is not entitled to extra wages unless there is a stipulation to that effect in the contract.

An apprentice is not obliged to work on *Sundays* but may be called upon to do so on Bank Holidays (*s*).

Jurisdiction of the Court of Chancery.—The Court of Chancery has no jurisdiction to interfere between master and apprentice. It has refused to entertain an application for cancellation of the indentures of apprenticeship and to direct the return of premium for refusal to receive and instruct an apprentice (*t*), holding that such relief could only be obtained by an action-at-law for breach of the contract. It has refused to grant an injunction to restrain an apprentice from taking employment under any other master, in violation of the terms of the contract (*u*). *Chitty*, J., deciding on the authority of *Gylbert* v. *Fletcher* (*x*), that inasmuch as no action could be brought against an infant on a covenant to serve, the negative clauses in the apprenticeship deed could not be enforced by injunction because the right to an injunction depends on the legal right to sue, and if there is no legal right to sue, which appears to have been the undisputed law since *Gylbert* v. *Fletcher*, there can be no right to an injunction.

Employers and Workmen Act, 1875.—By the Act of Elizabeth, justices of the peace had power to settle

(*s*) *Phillips* v. *Turner* (1837), 4 Cl. & F. 234.

(*t*) *Webb* v. *England* (1861), 30 L. J. Ch. 222 ; 3 L. T. 574 ; 7 Jur. (N.S.) 153 ; 29 Beav. 44, where see the remarks of ROMILLY, M.R.

(*u*) *De Francesco* v. *Barnum* (1889), 43 Ch. 165. *Fellows* v. *Wood* (1888), 59 L. T. 513, distinguished.

(*x*) (1629) Cro. Car. 179. "All the court resolved that though an infant may bind himself apprentice, and if he continues apprentice for seven years may have the benefit to use his trade, yet neither at the common law nor by 5 Eliz. 4 shall the covenant or obligation of an infant for his apprenticeship bind him."

disputes between masters and their apprentices, and to discharge or punish apprentices (*y*). Under the Employers and Workmen Act, 1875 (*z*) disputes between an apprentice to whom this Act applies and his master arising out of or incidental to their relation as such may be heard and determined by a court of summary jurisdiction (section 5). In any proceeding before such a court of summary jurisdiction the court has the same powers as if the dispute were between employer and workman, and has power (1) to make an order directing the apprentice to perform his duties under the apprenticeship, and (2) to rescind the instrument of apprenticeship, and on doing so may, if it thinks it just to do so, order the whole or any part of the premium to be repaid. Should an apprentice not obey such an order to perform his duties, the court may after one month from the date of the order imprison him for not more than fourteen days (section 6). By section 7 of the same Act, the court may make an order against the surety of the apprentice, in addition to, or in substitution for any order against the apprentice himself, to pay damages for any breach of contract of apprenticeship. The court may also accept security from such surety, or any other person willing, instead of or in mitigation of any punishment which it is authorized to inflict upon the apprentice. The term workmen is defined by section 10: and section 12 limits the application of the Act to apprentices to the business of a workman, as defined by the Act, upon whose binding either no premium is paid, or the premium (if any) does not exceed 25*l.* and to parish apprentices.

Employers' Liability Act, 1880.—All apprentices, therefore, for whom a larger premium than 25*l.* has been paid, do not come under the Act. As a corollary

(*y*) 5 Eliz. c. 4, s. 28. (*z*) 38 & 39 Vict. c. 90.

to this all such apprentices are also exempted from the Employers' Liability Act, 1880 (*a*) (for by section 8 of that statute "workmen" has the meaning given to it by the Employers and Workmen Act, 1875), and will not therefore be entitled to any remedy under its provisions for injury resulting from the master's negligence (section 1).

Reformatory and Industrial Schools Acts.—By the *Reformatory Schools Act*, 1866 (*b*) and the *Industrial Schools Act*, 1866 (*c*) the managers may at any time after an offender has been placed out on licence, if he conducts himself well, bind him with his own consent apprentice to any trade, calling, or service notwithstanding his period of detention has not expired. And by the *Reformatory and Industrial Schools Act*, 1891 (*d*) similar powers are conferred, and in addition the managers may dispose of the child or youthful offender by emigration, and such apprenticing or emigration shall be as valid as if the managers were his parents. Provided that where disposed of by emigration, and in any case unless detained for twelve months, the consent of the Secretary of State shall be required for the exercise of such powers.

Parish Apprentices.

The Act of Elizabeth.—That the Poor Relief Act of Elizabeth (*e*) was intended by its framers to prevent and put an end to the pauper class rather than to support it, is shown among other things by the power it gave to churchwardens and overseers with the assent of two justices to apprentice out pauper children until of full age. By this and subsequent statutes (*f*) all

(*a*) 43 & 44 Vict. c. 42.
(*b*) 29 & 30 Vict. c. 117, s. 19
(*c*) 29 & 30 Vict. c. 118, s. 28.
(*d*) 54 & 55 Vict. c. 23, s. 1.
(*e*) (1601), 43 Eliz. c. 2, s. 3.
(*f*) 8 & 9 Will. 3, c. 30, s. 5; 20 Geo. 3, c. 36.

kinds of persons, even gentlemen of fortune and clergymen, were held compellable to receive such apprentices (*g*).

Settlement.—Inasmuch as a settlement was gained after forty days apprenticeship, it became a cheap and easy way by which the guardians disburdened themselves, and if the apprenticeship were in an adjoining parish got rid of the pauper for ever. The system, it has been said, was merely a parochial billet of youth to compel the support of part of the poor in ease of the parish funds (*h*). Compulsory apprenticeship was abolished only during the present reign (*i*). These statutes were not enacted with a view to settlement. The *statutes relating to settlement* of an apprentice were 14 Car. 2, c. 12, and 3 W. & M. c. 11. s. 7. The apprenticeship of pauper children is not so common now as it was formerly, due to the abolition of compulsory apprenticeship and the introduction of compulsory elementary education.

General Order of July 24th, 1847.—The guardians still have the power of so binding poor children (*k*) and the consent of two justices is no longer required (*l*). The existing regulations are contained in the General Poor Law Order of July 24th, 1847, Articles 52—74. By these regulations no child under nine years of age, and no child who cannot read and write his own name, can be bound apprentice by the guardians. No child can be bound to a person who is not a householder, or assessed to the poor rate in his own name, no child can be bound to a journeyman, or to a person not

(*g*) *Reg.* v. *Gould* (1705), 1 Salk. 380.
(*h*) Chitty's "Apprentices."
(*i*) 7 & 8 Vict. c. 101, s. 13.
(*k*) This power is not restricted to the children of those who are actually in receipt of relief as paupers.
(*l*) 7 & 8 Vict. c. 101, s. 12.

carrying on trade or business on his own account, or who is under twenty-one years of age, or to a married woman (*m*). No premium other than clothing shall be given in case of apprentices over sixteen years of age. The premium shall consist in part of clothes and in part of money, one moiety of which shall be paid to the master at the binding, and the residue at the end of the first year.

The term of apprenticeship shall not exceed eight years.

No child above fourteen years of age shall be bound without his consent.

No child under the age of sixteen years shall be bound without his father's consent.

The master's place of business must not be more than thirty miles distant from the place in which the child is residing at the time of the proposed binding.

In the case of a child under fourteen a medical certificate is required that the child is physically suited to the trade in question.

The duties of the master to his apprentice are set out with great care and detail and with evident solicitude for the child's future welfare in *Article 70*, by which the master is bound to teach the child the trade or business set out in the indenture, and provide him with food, clothes, lodgings, and medical attendance when required. The indenture is to be executed in duplicate and signed by the apprentice, one part to be kept by the guardians, the other by the master. When the apprentice is more than seventeen years of age he must be paid wages by his master.

If the master does not observe the conditions of the indenture, it may be determined by the guardians, and

(*m*) This may be doubted since the Married Women's Property Act, 1882.

if he neglects the apprentice, or otherwise treats him badly, the guardians may institute proceedings for the offence (*n*).

Apprentices to the sea-service.—The guardians may also apprentice children to the *sea-service*. Every such apprenticeship must be executed by the boy and the person to whom he is bound in the presence of and shall be attested by two justices who shall ascertain that the boy has assented to be bound and has attained the age of twelve years, and is of sufficient health and strength, and that the person to whom the boy is bound is a proper person for the purpose (*o*).

Discharge and transference.—A parish apprentice cannot be discharged if under age without the consent of the parish authorities (*p*). An apprentice cannot be put away, transferred, assigned, or discharged without the consent of two justices (*q*). The master or some person legally authorized by him must execute the assignment (*r*), and an entry of the assignment must be made in the register of parish apprentices (*s*).

Death of master.—Within three months after the death of the master to whom not more than 5*l*. premium has been paid two justices may, on their application, order the apprentice to serve the residue of his term with the widow, son, daughter, executor, or administrator of the master (*t*).

Insolvency of master.—If a master, to whom a premium of not more than 5*l*. has been paid, become

(*n*) 24 & 25 Vict. c. 100, s. 26.
(*o*) See the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 106, 107.
(*p*) *R.* v. *Austrey* (1758), Burr. S.C. 441.
(*q*) 32 Geo. 3, c. 57, s. 7; 56 Geo. 3, c. 139, s. 9.
(*r*) *R.* v. *Spratton*, 3 B. & Ad. 818.
(*s*) 22 Geo. 3, c. 46, s. 5.
(*t*) 32 Geo. 3, c. 57, ss. 2, 3, 4, 9.

insolvent, or so reduced in circumstances as to be unable to employ or maintain his apprentice, he may, on application of the master be discharged by two justices (*u*).

Registration and visitation.—The overseers of the poor or persons having like powers, must, under pain of a penalty, keep a book for entering the name of every apprentice bound by them, and each entry must be signed by two justices. Such book may be inspected by any person at all reasonable hours, and it is evidence in all courts of law, in proof of existence of the indentures (*x*). Young persons under sixteen years of age who have been bound out as apprentices by the guardians must be visited periodically by the relieving officer; and if bound out at a distance greater than five miles, a written notice giving particulars of the binding of the apprentice shall be sent by the guardians binding to the guardians or overseers of the union or parish where the master resides (*y*).

(*u*) 32 Geo. 3, c. 57, ss. 8, 9.
(*x*) 42 Geo. 3, c. 46. ss. 2, 3, 6.
(*y*) 14 & 15 Vict. c. 11, ss. 4, 5.

APPENDIX OF STATUTES.

FATAL ACCIDENTS ACT, 1846 (LORD CAMPBELL'S ACT).

(9 & 10 VICT. CAP. 93.)

An Act for Compensating the Families of Persons killed by Accidents.
[26th August, 1846.]

[PREAMBLE.]

[1.] *When death is caused by negligence an action shall be maintainable.*] Whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

2. *Action to be for the benefit of certain relations, and brought by executor or administrator of deceased.*] Every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting the

costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

3. *Action to be commenced within year.*] Provided always, that not more than one action shall lie for and in respect of the same subject matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

4. *Plaintiff to deliver particulars.*] In every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

5. *Construction of Act.*] The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

6. *Act not to apply to Scotland.*] [This Act shall come into operation from and immediately after the passing thereof, and] (*a*) nothing therein contained shall apply to that part of the United Kingdom called Scotland.

FATAL ACCIDENTS ACT, 1864.

(27 & 28 Vict. Cap. 95.)

An Act to amend the Act Ninth and Tenth Victoria, Chapter Ninety-three, for Compensating the Families of Persons killed by Accident.
[29th July, 1864.]

[Preamble recites 9 & 10 Vict. c. 93.]

1. *Action may be brought by the persons beneficially interested where no executor, etc.*] If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the

(*a*) Words in brackets repealed by 38 & 39 Vict. c. 66 (S. L. R.)

said Act, that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator, no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by and in the name of such executor or administrator.

2. *Payments into court.*] (Recital of 9 & 10 Vict. c. 93, s. 2). It shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said Act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

3. *Construction.*] This Act and the said Act shall be read together as one Act.

CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875.

(38 & 39 VICT. CAP. 86.)

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes.

[13th August, 1875.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1. *Short Title.*] This Act may be cited as the Conspiracy and Protection of Property Act, 1875.

2. *Commencement of Act.*] This Act shall come into operation on the first day of September, one thousand eight hundred and seventy-five.

Conspiracy and Protection of Property.

3. *Amendment of law as to conspiracy in trade disputes.*] An agreement or combination by two or more persons to do, or procure to be

done, any act in contemplation or furtherance of a trade dispute between employers and workmen, shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable, under the statute making the offence punishable, to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

4. *Breach of contract by persons employed in supply of gas or water.*] Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such

default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

5. *Breach of contract involving injury to persons or property.*] Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Miscellaneous.

6. *Penalty for neglect by master to provide food, clothing, etc., for servant or apprentice.*] Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

7. *Penalty for intimidation or annoyance by violence or otherwise.*] Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do, or abstain from doing, wrongfully and without legal authority,—

1. Uses violence to or intimidates such other person or his wife or children, or injures his property ; or
2. Persistently follows such other person about from place to place ; or
3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof ; or
4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place ; or
5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to

such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

8. *Reduction of penalties.*] Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one-fourth of the penalty imposed by such Act.

Legal Proceedings.

9. *Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.*] Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence, and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

10. *Proceedings before court of summary jurisdiction.*] Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction, or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

11. *Regulations as to evidence.*] Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses.

12. *Appeal to quarter sessions.*] In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions for the county.

(The remainder of this section was repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), so that now the procedure is regulated by the Summary Jurisdiction Acts (42 & 43 Vict. c. 49), and (47 & 48 Vict. c. 43)).

Definitions.

13. *General definitions: "The Summary Jurisdiction Act."*] In this Act,—

The expression "the Summary Jurisdiction Act" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same; and

The expression "court of summary jurisdiction" means—

(1.) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice-room; and

(2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and

(3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

(4.) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

14. *Definitions of "municipal authority" and "public company."*] The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being, subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or

place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

15. "*Maliciously*" *in this Act construed as in Malicious Injuries to Property Act.*] The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

Saving Clause.

16. *Saving as to sea service.*] Nothing in this Act shall apply to seamen or to apprentices to the sea service.

Repeal.

17. *Repeal of Acts.*] On and after the commencement of this Act, there shall be repealed :—

I. The Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter thirty-two, intituled "An Act to amend the Criminal Law relating to violence, threats, and molestation"; and

II. "The Master and Servant Act, 1867," and the enactments specified in the First Schedule to that Act, with the exceptions following as to the enactments in such Schedule ; (that is to say,)

(1.) Except so much of sections one and two of the Act passed in the thirty-third year of the reign of King George the Third, chapter fifty-five, intituled "An Act to authorize justices of the peace to impose fines upon constables, overseers, and other peace or parish officers for neglect of duty, and on masters of apprentices for ill-usage of such their apprentice ; and also to make provision for the execution of warrants of distress granted by magistrates," as relates to constables, overseers, and other peace or parish officers ; and

(2.) Except so much of sections five and six of an Act passed in the fifty-ninth year of the reign of King George the Third, chapter ninety-two, intituled "An Act to enable justices of the peace in Ireland to act as such, in certain cases, out of the limits of

the counties in which they actually are ; to make provision for the execution of warrants of distress granted by them ; and to authorize them to impose fines upon constables and other officers for neglect of duty, and on masters for ill-usage of their apprentices," as relates to constables and other peace or parish officers ; and

(3.) Except the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter seven, intituled "An Act to explain the Acts for the better regulation of certain apprentices" ; and

(4.) Except sub-sections one, two, three, and five of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," relating to certain disputes between employers and the persons employed by them ; and

III. Also there shall be repealed the following enactments making breaches of contract criminal, and relating to the recovery of wages by summary procedure ; (that is to say,)

(*a.*) An Act passed in the fifth year of the reign of Queen Elizabeth, chapter four, and intituled "An Act touching dyvers orders for artificers, labourers, servantes of husbandrye, and apprentices" ; and

(*b.*) So much of section two of an Act passed in the twelfth year of King George the First, chapter thirty-four, and intituled "An Act to prevent unlawful combination of workmen employed in the woollen manufactures, and for better payment of their wages," as relates to departing from service and quitting or returning work before it is finished ; and

(*c.*) Section twenty of an Act passed in the fifth year of King George the Third, chapter fifty-one, the title of which begins with the words "An Act for repealing several Laws relating to the manufacture of woollen cloth in the county of York," and ends with the words "for preserving the credit of the said manufacture at the foreign market ;" and

(*d.*) An Act passed in the nineteenth year of King George the Third, chapter forty-nine, and intituled "An Act to prevent abuses in the payment of wages to persons employed in the bone and thread lace manufactory ;" and

(*e.*) Sections eighteen and twenty-three of an Act passed in the session of the third and fourth years of Her present Majesty, chapter ninety-one, intitled "An Act for the more effectual prevention of frauds and abuses committed by weavers, sewers, and other persons employed in the linen, hempen,

union, cotton, silk, and woollen manufactures in Ireland, and for the better payment of their wages, for one year, and from thence to the end of the next session of Parliament;" and

(*f.*) Section seventeen of an Act passed in the session of the sixth and seventh years of Her present Majesty, chapter forty, the title of which begins with the words "An Act to amend the Laws," and ends with the words "workmen engaged therein;" and

(*g.*) Section seven of an Act passed in the session of the eighth and ninth years of Her present Majesty, chapter one hundred and twenty-eight, and intituled "An Act to make further regulations respecting the tickets of work to be delivered to silk weavers in certain cases."

Provided that,—

(1.) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise; and

(2.) The repeal enacted by this section shall not affect—

(*a.*) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed; or

(*b.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*c.*) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

Application of Act to Scotland.

18. *Application to Scotland. Definitions.*] This Act shall extend to Scotland, with the modifications following; that is to say,—

(1.) The expression "municipal authority" means the town council of any royal or parliamentary burgh, or the commissioners of police of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867:

(2.) The expression "The Summary Jurisdiction Act" means the Summary Procedure Act, 1864, and any Acts amending the same:

(3.) The expression "the court of summary jurisdiction" means the sheriff of the county or any one of his substitutes.

19. [*Recovery of penalties, etc., in Scotland.*] In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act :

(1.) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the Procurator Fiscal of the sheriff court :

(2.) The proceedings may be on indictment in the Court of Justiciary in Edinburgh or on circuit or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864 :

(3.) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864 :

(4.) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

20. *Appeal in Scotland, as prescribed by* 20 *Geo.* 2, *c.* 43.] In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next circuit Court of Justiciary, or where there are no circuit courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

Application of Act to Ireland.

21. *Application to Ireland.*] This Act shall extend to Ireland, with the modifications following ; that is to say,—

The expression "The Summary Jurisdiction Act" shall be construed to mean, as regards the police district of Dublin metropolis, the Act regulating the powers and duties of justices of the peace for such district ; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same :

The expression "court of summary jurisdiction" shall be construed to mean any justice or justices of the peace, or other

magistrate to whom jurisdiction is given by the Summary Jurisdiction Act :

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or justices of the peace in petty sessions sitting at a place appointed for holding petty sessions :

The expression "municipal authority" shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, entitled "An Act for the Regulation of Municipal Corporations in Ireland," and any commissioners invested by any general or local Act of Parliament, with power of improving, cleansing, lighting, or paving any town or township.

EMPLOYERS AND WORKMEN ACT, 1875.

(38 & 39 Vict. Cap. 90.)

An Act to enlarge the powers of County Courts in respect of disputes between Employers and Workmen, and to give other Courts a limited civil jurisdiction in respect of such disputes.

[13th August, 1875.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. *Short Title.*] This Act may be cited as the Employers and Workmen Act, 1875.

2. *Commencement of Act.*] This Act, except so far as it authorizes any rules to be made or other thing to be done at any time after the passing of this Act, shall come into operation on the first day of September, one thousand eight hundred and seventy-five.

Part I.

Jurisdiction—Jurisdiction of County Court.

3. *Power of county court as to ordering of payment of money, set-off, and rescission of contract and taking security.*] In any proceeding before a county court in relation to any dispute between an employer

and a workman arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act), the court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers; that is to say,—

(1.) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise ; and,

(2.) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just ; and,

(3.) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant ; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

Court of Summary Jurisdiction.

4. *Jurisdiction of justices in disputes between employers and workmen.*] A dispute under this Act between an employer and a workman may be heard and determined by a court of summary jurisdiction, and such court, for the purposes of this Act, shall be deemed to be a court of civil jurisdiction, and in a proceeding in relation to any such dispute the court may order payment of any sum which it may find to be due as wages, or damages, or otherwise, and may exercise all or any of the powers by this Act conferred on

a county court: Provided that in any proceeding in relation to any such dispute the court of summary jurisdiction—

(1.) Shall not exercise any jurisdiction where the amount claimed exceeds ten pounds; and

(2.) Shall not make an order for the payment of any sum exceeding ten pounds, exclusive of the costs incurred in the case; and

(3.) Shall not require security to an amount exceeding ten pounds from any defendant or his surety or sureties.

5. *Jurisdiction of justices in disputes between masters and apprentices.*] Any dispute between an apprentice to whom this Act applies and his master, arising out of, or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act), may be heard and determined by a court of summary jurisdiction.

6. *Powers of justices in respect of apprentices.*] In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers:

(1.) It may make an order directing the apprentice to perform his duties under the apprenticeship; and

(2.) If it rescinds the instrument of apprenticeship it may, if it thinks it just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.

7. *Order against surety of apprentice, and power to friend of apprentice to give security.*] In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, if there is any person liable, under the instrument of apprenticeship, for the good conduct of the apprentice, that person may, if the court so direct, be summoned in like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may, in addition to, or in substitution for any order which the court is authorized to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorized to inflict upon the apprentice.

PART II.

Procedure.

8. *Mode of giving security.*] A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made rescind, alter, and add to, rules with respect to giving security under this Act.

9. *Summary proceedings.*] Any dispute or matter in respect of which jurisdiction is given by this Act to a court of summary jurisdiction shall be deemed to be a matter on which that court has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act, but shall not be deemed to be a criminal proceeding; and all powers by this Act conferred on a court of summary jurisdiction shall be deemed to be in addition to and not in derogation of any powers conferred on it by the Summary Jurisdiction Act, except that a warrant shall not be issued under that Act for apprehending any person other than an apprentice for failing to appear to answer a complaint in any proceeding under this Act, and that an order made by a court of summary jurisdiction under this Act for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions by this Act provided; and no goods or chattels shall be taken under a distress ordered by a court of summary jurisdiction which might not be taken under an execution issued by a county court.

A court of summary jurisdiction may direct any sum of money, for the payment of which it makes an order under this Act, to be paid by instalments, and may from time to time rescind or vary such order.

Any sum payable by any person under the order of a court of summary jurisdiction in pursuance of this Act, shall be deemed to be a debt due from him in pursuance of a judgment of a competent court within the meaning of the fifth section of the Debtors Act, 1869, and may be enforced accordingly; and as regards any such

debt a court of summary jurisdiction shall be deemed to be a court within the meaning of the said section.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules for carrying into effect the jurisdiction by this Act given to a court of summary jurisdiction, and in particular for the purpose of regulating the costs of any proceedings in a court of summary jurisdiction, with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court, and any rules so made, in so far as they relate to the exercise of jurisdiction under the said fifth section of the Debtors Act, 1869, shall be deemed to be prescribed rules within the meaning of the said section.

Part III.

Definitions and Miscellaneous.

Definitions.

10. *Definitions: "workman:" The Summary Jurisdiction Act."*] In this Act—

The expression "workman" does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

The expression "the Summary Jurisdiction Act" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same.

The expression "court of summary jurisdiction" means

(1.) As respects the City of London, the lord mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and

(2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and

(3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

(4.) Elsewhere any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act:

Provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, a complaint under this Act shall be heard and determined and an order for imprisonment made by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the lord mayor or any alderman of the City of London, or of any metropolitan police or stipendiary magistrate in respect of any act or jurisdiction which may now be done or exercised by him out of court.

11. *Set off in case of factory workers.*] In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874, any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.

Application.

12. *Application to apprentices.*] This Act, in so far as it relates to apprentices, shall apply only to an apprentice to the business of a workmen as defined by this Act upon whose binding either no premium is paid, or the premium (if any) paid does not exceed twenty-five pounds, and to an apprentice bound under the provisions of the Acts relating to the relief of the poor.

Saving Clause.

13. *Saving of special jurisdiction, and seamen.*] Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.

This Act shall not apply to seamen or to apprentices to the sea service.

PART IV.

Application of Act to Scotland.

14. *Application to Scotland. Definitions.*] This Act shall extend to Scotland, with the modifications following; that is to say,

In this Act with respect to Scotland—

The expression "county court" means the ordinary sheriff court of the county:

The expression "the court of summary jurisdiction" means the small debt court of the sheriff of the county:

The expression "sheriff" includes sheriff substitute:

The expression "instrument of apprenticeship" means indenture:

The expression "plaintiff" or "complainant" means pursuer or complainer:

The expression "defendant" includes defender or respondent:

The expression "the Summary Jurisdiction Act" means the Act of the seventh year of the reign of His Majesty King William the Fourth and the first year of the reign of Her present Majesty, chapter forty-one, intituled "An Act for the more effectual recovery of small debts in the sheriff courts, and for regulating the establishment of circuit courts for the trial of small debt causes by the sheriffs in Scotland," and the Acts amending the same:

The expression "surety" means cautioner.

This Act shall be read and construed as if for the expression "the Lord Chancellor," wherever it occurs therein, the expression "the Court of Session by act of sederunt" were substituted.

All jurisdiction, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs in their ordinary or small debt courts, as the case may be, who shall have full power to make any order on any summons, petition, complaint, or other proceeding under this Act, that any county court or court of summary jurisdiction is empowered to make on any complaint or other proceeding under this Act.

Any decree or order pronounced or made by a sheriff under this Act shall be enforced in the same manner and under the same conditions in and under which a decree or order pronounced or made by him in his ordinary or small debt court, as the case may be, is enforced.

Part V.

Application of Act to Ireland.

15. *Application to Ireland.*] This Act shall extend to Ireland, with the modifications following; that is to say,

The expression "county court" shall be construed to mean civil bill court:

The expression "Lord Chancellor" shall be construed to mean the Lord Chancellor of Ireland:

The expression "the Summary Jurisdiction Act" shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same:

The expression "court of summary jurisdiction" shall be construed to mean any justice or justices of the peace or other magistrate to whom jurisdiction is given, by the Summary Jurisdiction Act:

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of

Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions :

The expression "fifth section of the Debtors Act, 1869," shall be construed to mean "sixth section of Debtors Act (Ireland), 1872."

EMPLOYERS' LIABILITY ACT, 1880.

(43 & 44 VICT. CAP. 42.)

An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their service. [7th September, 1880.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Amendment of law.*] Where after the commencement of this Act personal injury is caused to a workman :

(1.) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or

(2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence ; or

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or

(4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or

(5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway,

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

2. *Exceptions to amendment of law.*] A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say,

(1.) Under sub-section one of section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2.) Under sub-section four of section one, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade, or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.

(3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

3. *Limit of sum recoverable as compensation.*] The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

4. *Limit of time for recovery of compensation.*] An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

5. *Money payable under penalty to be deducted from compensation under Act.*] There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to

such workman, representatives, or persons in respect of the same cause of action ; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament, in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

6. *Trial of actions.*]—(1.) Every action for recovery of compensation under this Act shall be brought in a county court, but may, upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed.

(2.) Upon the trial of any such action in a county court before the judge without a jury, one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

"County court" shall, with respect to Scotland, mean the "Sheriff's Court," and shall, with respect to Ireland, mean the "Civil Bill Court."

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by and subject to the conditions prescribed by section nine of the Sheriff Courts (Scotland) Act, 1877 (40 & 41 Vict. c. 50).

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties, and in respect of different injuries.

7. *Mode of serving notice of injury.*] Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter, addressed to the person on whom it is to be served at his last known place of residence or place of business ; and, if served by post, shall

be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

8. *Definitions.*] For the purposes of this Act, unless the context otherwise requires—

The expression "person who has superintendence entrusted to him," means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour:

The expression "employer" includes a body of persons corporate or unincorporate:

The expression "workman" means a railway servant and any person to whom the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), applies.

9. *Commencement of Act.*] This Act shall not come into operation until the first day of January, one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

10. *Short title.*] This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December, one thousand eight hundred and eighty-seven, and to the end of the then next session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

WORKMEN'S COMPENSATION ACT, 1897.

(60 & 61 Vict. Cap. 37.)

An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their employment.

[6th August, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and

Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. *Liability of certain employers to workmen for injuries.*]—(1.) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as herein-after mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that :—

(*a.*) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed ;

(*b.*) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act ; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid ;

(*c.*) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

(4.) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed ; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs

which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

2. *Time for taking proceedings.*] (1.) Proceedings for the recovery under this Act of compensasation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause.

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at, the office, or, if there be more than one office, any one of the offices of such body.

3. *Contracting out.*]—(1.) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance

for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2.) The registrar may give a certificate to expire at the end of a limited period not less than five years.

(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4.) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5.) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

4. *Sub-contracting.*] Where, in an employment to which this Act applies, the undertakers as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified

by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

5. *Compensation to workmen in case of bankruptcy of employer.*]—(1.) Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2.) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

6. *Recovery of damages from stranger.*] Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

7. *Application of Act and definitions.*]—(1.) This Act shall apply only to employment by the undertakers as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as hereinafter defined on in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

(2.) In this Act—

"Railway" means the railway of any railway company to which the Regulation of Railways Act, 1873 (*a*), applies, and includes a light railway made under the Light Railways Act, 1896 (*b*); and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896:

(*a*) 36 & 37 Vict. c. 48. (*b*) 59 & 60 Vict. c. 48.

Factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895 (*c*), and every laundry worked by steam, water, or other mechanical power :

"Mine" means a mine to which the Coal Mines Regulation Act, 1887 (*d*), or the Metalliferous Mines Regulation Act, 1872 (*e*), applies :

"Quarry" means a quarry under the Quarries Act, 1894 (*f*) :

"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used :

"Undertakers" in the case of a railway means the railway company ; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshop Acts, 1878 to 1895 ; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be, and in the case of an engineering work means the person undertaking the construction, alteration, or repair ; and in the case of a building means the persons undertaking the construction, repair, or demolition :

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer :

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable :

"Dependants" means—

(a) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846 (*g*), as were wholly or in part dependent upon the earnings of the workman at the time of his death ; and

(b) in Scotland such of the persons entitled according to the law of Scotland to sue the employer for damages

(*c*) 58 & 59 Vict. c. 37.
(*d*) 50 & 51 Vict. c. 58.
(*e*) 35 & 36 Vict. c. 77.
(*f*) 57 & 58 Vict. c. 42.
(*g*) 9 & 10 Vict. c. 93.

or solatium in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

(3.) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

8. *Application to workmen in employment of Crown.*]—(1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

(2.) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887 (*h*), and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act.

9. *Provision as to existing contracts.*] Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

10. *Commencement of Act and short title.*]—(1.) This Act shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

(2.) This Act may be cited as the Workmen's Compensation Act, 1897.

SCHEDULES.

FIRST SCHEDULE (*i*).

Scale and Conditions of Compensation.

Scale.

(1.) The amount of compensation under this Act shall be—

(a) where death results from the injury—

(i.) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same

(*h*) 50 & 51 Vict. c. 67. (*i*) Sections 1, 5.

employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer ;

(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants ; and

(iii.) If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds ;

(*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound.

(2.) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

(3.) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

(4.) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due ; and if made to the legal personal representative shall be paid by him to or

for the benefit of the dependants or other person entitled thereto under this Act.

(5.) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank, and the declaration to be made by a depositor, shall not apply to such sums.

(9.) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or by the judge of the county court.

(10.) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(11.) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12.) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be

ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(13.) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(14.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(15.) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896 (*k*), shall not apply to such society in respect of such scheme.

(16.) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

(17.) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877 (*l*), with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

SECOND SCHEDULE (*m*).

ARBITRATION.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration :—

(1.) If any committee, representative of an employer and his workmen exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure

(*k*) 59 & 60 Vict. c. 25. (*l*) 40 & 41 Vict. c. 56. (*m*) Section 1.

prescribed by rules of court, or if in England the Lord Chancellor so authorizes, according to the like procedure, by a single arbitrator appointed by such county court judge.

(3.) Any arbitrator appointed by the county court judge shall, for the purposes of this Act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury.

(4.) The Arbitration Act, 1889(*n*), shall not apply to any arbitration under this Act; but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the county court judge, or the arbitrator appointed by him shall, for the purpose of an arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court.

(5.) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7.) In the case of the death or refusal or inability to act of an arbitrator, a judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator.

(8.) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator, or by any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time rectify such register.

(9.) Where any matter under this Act is to be done in a county court, or by to or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by to or before the judge or registrar of, the county court of the district in which all the parties concerned

(*n*) 52 & 53 Vict. c. 49.

reside, or if they reside in different districts the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

(10.) The duty of a county court judge under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorizes rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888(*o*), and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(11.) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

(12.) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13.) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration ; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

(14.) In the application of this Schedule to Scotland—

(a.) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for "registrar of the county court," and "act of sederunt" for "rules of court : "

(b.) Any award or agreement as to compensation under this Act may be competently recorded for execution in the books of council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral :

(c.) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided

(*o*) 51 & 52 Vict. c. 43.

by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876 (*p*), save only that parties may be represented by any person authorized in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally, and remit to the sheriff with instruction as to the judgment to be pronounced.

(15.) Paragraphs four and seven of this schedule shall not apply to Scotland.

(16.) In the application of this schedule to Ireland the expression "county court judge" shall include the recorder of any city or town.

(*p*) 39 & 40 Vict. c. 70.

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